

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Amendment of Section 73.622(j), Table of ) MB Docket No. 24-176
Allotments, Television Broadcast Stations ) RM-11984
(Cape Girardeau, Missouri) )

NOTICE OF PROPOSED RULEMAKING

Adopted: June 28, 2024

Released: June 28, 2024

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed June 7, 2024, by Gray Television Licensee, LLC (Gray), the licensee of KFVS-TV, channel 11, Cape Girardeau, Missouri (Station or KFVS-TV).1 Gray held a construction permit to construct a facility on channel 32 at Cape Girardeau.2 Gray now requests that the Bureau substitute channel 11 for channel 32 at Cape Girardeau in the Table of TV Allotments,3 with the technical parameters as set forth in KFVS-TV’s current license.4

II. BACKGROUND

2. On May 5, 2021, the Bureau granted a petition for rulemaking submitted by Gray to substitute channel 32 for channel 11 at Cape Girardeau for KFVS-TV.5 On June 23, 2021, Gray was granted a construction permit for its new channel, with an expiration date of June 23, 2024. In its Petition, Gray stated that it would be unable to complete construction of the channel 32 facility by the expiration date.6 Thus, Gray requests amendment of the Table of TV Allotments to allow it to continue to operate on channel 11. Gray proposes to specify the technical parameters of its currently licensed channel 11 facility.

1 Petition of Gray Television Licensee, LLC for Rulemaking (filed June 7, 2024), on file at LMS File No. 0000245961 (Petition).

2 LMS File No. 0000150355.

3 47 CFR § 73.622(j).

4 LMS File No. 0000115816.

5 See Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Cape Girardeau, Missouri), MB Docket No. 21-50, Report and Order, 36 FCC Rcd 8172 (MB 2021).

6 Petition at 2. The channel 32 facility was not constructed by June 23, 2024, and the construction permit has been forfeited. See 47 CFR § 73.3598(e) (“Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”).

### III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal for KFVS-TV warrants consideration. KFVS-TV is currently operating on channel 11 and the substitution of channel 11 for channel 32 in the Table of TV Allotments will allow the Station to remain on the air and continue to provide service to viewers within its service area. Given that Gray proposes to utilize its currently licensed parameters, we believe channel 11 can be substituted for channel 32 at Cape Girardeau as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the Commission's rules (rules),<sup>7</sup> at coordinates 37-25'-44.7" N. and 089-30'-14.2" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the rules.<sup>8</sup>

4. We propose to substitute channel 11 for channel 32 for KFVS-TV at Cape Girardeau with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Cape Girardeau, Missouri	11	11.8	609

5. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,<sup>9</sup> for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Cape Girardeau, Missouri	32, 36	11, 36

### IV. PROCEDURAL MATTERS

6. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.<sup>10</sup> Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.<sup>11</sup>

<sup>7</sup> 47 CFR § 73.618(a) (formerly § 73.623(c)). The Commission recently amended its television rules to reflect the transition from analog to digital-only operations, the completion of the post-incentive auction transition, and to reorganize a portion of the part 73 rules to make them easier to find and more practical for users. *See Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations*, MB Docket No. 22-227, Public Notice, DA 24-196 (MB Mar. 4, 2024); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 40 (Sept. 19, 2023) (*Part 73 Amendment R&O*).

<sup>8</sup> 47 CFR § 73.622(a) (formerly §§ 73.616 and 73.623). *See also supra* n.7 and *Part 73 Amendment R&O* at para. 40.

<sup>9</sup> 47 CFR § 73.622(j).

<sup>10</sup> *See, e.g., Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

<sup>11</sup> 47 CFR § 1.420(j).

7. *Cut-off Protection.* The following procedures will govern the consideration of the filings in this proceeding:

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.<sup>12</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>13</sup>

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,<sup>14</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>15</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
  - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.<sup>16</sup>
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554

9. *Service.* Pursuant to section 1.420 of the rules,<sup>17</sup> all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.<sup>18</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Joan Stewart, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, D.C. 20006

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<sup>12</sup> 47 CFR § 1.420(d).

<sup>13</sup> 47 CFR § 1.420(g)(2).

<sup>14</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>15</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>16</sup> Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

<sup>17</sup> 47 CFR § 1.420.

<sup>18</sup> See 47 CFR §1.420(a), (b) and (c).

10. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.<sup>19</sup> For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.<sup>20</sup> An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.<sup>21</sup> However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.<sup>22</sup> Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

11. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.<sup>23</sup> Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

12. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

13. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>24</sup> do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.<sup>25</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>26</sup> In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.<sup>27</sup>

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<sup>19</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>20</sup> 47 CFR § 1.1208.

<sup>21</sup> 47 CFR § 1.1204(a)(10).

<sup>22</sup> 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

<sup>23</sup> 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

<sup>24</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>25</sup> 47 CFR § 73.622(j).

<sup>26</sup> See 44 U.S.C. §§ 3501-3520.

<sup>27</sup> See 44 U.S.C. § 3506(c)(4).

14. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

15. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau at [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov) or Mark Colombo, Video Division, Media Bureau at [Mark.Colombo@fcc.gov](mailto:Mark.Colombo@fcc.gov).

## V. ORDERING CLAUSES

16. **IT IS ORDERED** that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO AMEND** the Table of TV Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM IS ADOPTED*.

17. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 24-176 and RM-11984 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau