

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

In the Matter of)
)
Amendment of Section 73.622(j), Table of) MB Docket No. 24-224
Allotments, Television Broadcast Stations) RM-11988
(Lubbock, Texas))

NOTICE OF PROPOSED RULEMAKING

Adopted: July 29, 2024

Released: July 29, 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 Joint Petition for Rulemaking filed May 21, 2024, by Gray Television Licensee, LLC (Gray), the licensee of KCBD, Lubbock, Texas (K CBD), which is operating on channel 11 but previously held a construction permit for channel 36,1 and SagamoreHill of Lubbock, LLC (SagamoreHill), the licensee of KJTV-TV, channel 35, Lubbock, Texas (KJTV-TV).2 As discussed below, Gray and SagamoreHill request that the Bureau amend the Table of TV Allotments to permit the stations to “swap” channels and authorize KCBD to operate on channel 35 and KJTV-TV to operate on channel 11. Accordingly, we seek comment on substituting channel 11 for channel 35 and channel 35 for channel 36 at Lubbock, Texas (Lubbock).3

II. BACKGROUND

2. In 2021, at Gray’s request, the Bureau amended the Table of TV Allotments to substitute UHF channel 36 for VHF channel 11 at Lubbock.4 Accordingly, channel 11 is no longer allotted to Lubbock in the Table of TV Allotments.5 Gray requested and was granted a construction permit to modify KCBD’s facility to operate on channel 36 at Lubbock,6 using the existing broadband antenna

1 LMS File No. 0000149814 (granted June 14, 2021).

2 Joint Petition for Rulemaking (filed May 21, 2024), LMS File No. 0000245119 (Joint Petition). The parties are referred to collectively as the “Joint Petitioners.” Gray and SagamoreHill state that they are parties to a Shared Services Agreement whereby Gray provides certain operational services to KJTV-TV. Joint Petition at n.2.

3 We note that the Joint Petitioners request that the Commission authorize the filing of major modification applications to implement their “proposed channel swap.” Id. at 4. This is not the correct procedure for implementing the requested changes. When the Commission substitutes channels in the Table of TV Allotments through a rulemaking proceeding, the change is implemented through the petitioning station filing a minor modification application after the new channel is allotted, and subsequently following the normal procedures for licensing such modifications by filing an application for license to cover. See 47 CFR § 73.3572(a); see also Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Lubbock, Texas), MB Docket No. 21-61, Report and Order, 36 FCC Rcd 7536 (MB 2021) (Channel 36 R&O). The Joint Petitioners will be expected to follow such established procedures if the dual channel substitutions are authorized.

4 Channel 36 R&O.

5 47 CFR § 73.622(j).

6 See supra n.1.

currently used by KJTV-TV that is mounted on a tower located 5.5 kilometers from the licensed KCBD channel 11 site.⁷ Gray did not construct the facility.⁸ The Joint Petitioners now propose to “swap” the licensed channels and equipment for KCBD (channel 11) and KJTV-TV (channel 35).⁹ In order to effectuate this proposal, the Bureau must: (1) amend the Table of TV Allotments to substitute channel 11 at Lubbock for channel 35 and (2) amend the Table of TV Allotments to substitute channel 35 at Lubbock for channel 36.¹⁰ Upon grant of the proposed channel substitutions, the Joint Petitioners must simultaneously implement their proposed channel substitutions.¹¹

3. According to the Joint Petitioners, this proposal will serve the public interest because it will allow SagamoreHill to replace KJTV-TV’s failing equipment with the equipment currently used by KCBD on channel 11.¹² Specifically, Joint Petitioners state that KJTV-TV’s tube transmitter is failing, that replacement parts for tube transmitters are not available, and that the cost for SagamoreHill to replace the transmitter for KJTV-TV’s 1000 kW facility is prohibitively expensive. KCBD’s channel 11 equipment, however, “is in good operating condition.”¹³ According to the Joint Petitioners, because Gray had planned to invest in a new 1000 kW transmitter for KCBD on channel 36, it will be able to use the new transmitter to instead replace the failing channel 35 transmitter and operate KCBD on channel 35.¹⁴ In turn, Gray will provide SagamoreHill with its channel 11 equipment (i.e., antenna, transmitter, etc.) that it had planned to decommission following its move to channel 36.

4. With regard to the proposed channel substitutions, according to the Engineering Statement submitted with the Joint Petition, there would be no predicted loss area on channel 35 when compared to KCBD’s previously-authorized channel 36 facility. There would in fact be a small gain of 191 persons.¹⁵ Further, the proposed channel 11 facility for KJTV-TV encompasses its currently licensed channel 35 facility, and thus would also not result in any viewer loss. In fact, moving KJTV-TV from channel 35 to channel 11 would provide additional service to approximately 8,000 persons.¹⁶

III. DISCUSSION

5. We believe that Joint Petitioners’ proposal warrants consideration. We believe channel 11 can be substituted for channel 35 at Lubbock, as proposed, in compliance with the principal

⁷ Joint Petition, Engineering Statement at 1.

⁸ Joint Petition at 1-2. Because the channel 36 facility was not constructed, the construction permit expired on June 14, 2024, and 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.”). The Joint Petition was filed prior to expiration of the construction permit, and as such, to the extent necessary, we find that it remains valid in order for us to evaluate and act upon the requested channel substitutions.

⁹ Joint Petition at 1-2.

¹⁰ See *supra* n.3.

¹¹ We propose to condition any minor modification to require the Joint Petitioners to coordinate implementation of the channel substitutions proposed herein.

¹² Joint Petition at 3.

¹³ *Id.* at 3-4.

¹⁴ See *id.* We note that comparing KCBD’s proposed channel 35 facility to its licensed channel 11 operation, the loss is approximately 350 persons, consistent with the *de minimis* value previously approved in KCBD’s prior channel substitution to channel 36. See *Channel 36 R&O*, 36 FCC Rcd at 7536, para. 2 and Joint Petition, Engineering Statement at 4.

¹⁵ Joint Petition, Engineering Statement at 3.

¹⁶ Joint Petition at 4, Engineering Statement at 5.

community coverage requirements of section 73.618(a) of the Commission’s rules (Rules),¹⁷ at coordinates 33°-32'-29.9" N. and 101°-50'-13.6" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the Rules.¹⁸ Furthermore, the proposed channel substitution would not cause any loss of service to viewers of KJTV-TV, would increase the population served within KJTV-TV’s NLSC, and would provide KJTV-TV with access to better and more functional equipment.

6. We propose to substitute channel 11 for channel 35 as requested in the Joint Petition at Lubbock with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Lubbock, Texas	11	41	234

7. We also believe that channel 35 can be substituted for channel 36 at Lubbock, as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the Rules,¹⁹ at coordinates 33°-30'-08.3" N. and 101°-52'-21.3" W. In addition, we find that this channel change meets the technical requirements set forth in section 73.622(a) of the Rules.²⁰ This proposed channel substitution would not cause any loss of service to the previously-authorized KCBD facility on channel 36, and would in fact increase that service by 191 persons.²¹

8. We propose to substitute channel 35 for channel 36 as requested in the Joint Petition at Lubbock with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Lubbock, Texas	35	1000	282

9. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the Rules,²² for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Lubbock, Texas	16, *25, 27, 31, 35, 36	11, 16, *25, 27, 31, 35

IV. PROCEDURAL MATTERS

10. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Joint Petitioners or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner

¹⁷ See 47 CFR § 73.618(a) (formerly 47 CFR § 73.625(a)). 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*).

¹⁸ 47 CFR § 73.622(a) (formerly §§ 73.616 and 73.623). See also *supra* n.17 and *Part 73 Amendment R&O* at para. 40.

¹⁹ See 47 CFR § 73.618(a). See also *supra* n.17.

²⁰ 47 CFR § 73.622(a). See also *supra* n.18 and *Part 73 Amendment R&O* at para. 40.

²¹ Joint Petition, Engineering Statement at 3.

²² 47 CFR § 73.622(j).

of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The Joint Petitioners must restate their present intention to apply for the channels if allotted and, if authorized, to build the stations promptly.²³ Failure to file may lead to denial of this 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.²⁴

11. *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.²⁵
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Joint Petition.²⁶

12. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,²⁷ 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).²⁸

- 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.²⁹
 - 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.

13. *Service.* Pursuant to section 1.420 of the Rules,³⁰ 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

²³ 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).

²⁴ 47 CFR § 1.420(j).

²⁵ 47 CFR § 1.420(d).

²⁶ 47 CFR § 1.420(g)(2).

²⁷ 47 CFR §§ 1.415, 1.419, and 1.420.

²⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²⁹ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

³⁰ 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.³¹ Additionally, a copy of such comments should be served on counsel for the Joint Petitioners, as follows:

Joan Stewart, Esq.
Wiley Rein LLP
2050 M Street, NW
Washington, D.C. 20036

Scott Woodworth, Esq.
Edinger Associates PLLC
1725 I Street, Ste. 300
Washington, D.C. 20006

14. *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.³² 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.³³ 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.³⁴ 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.³⁵ Any comment that has not been served on the Joint Petitioners 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.

15. *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.³⁶ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

16. *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.

³¹ See 47 CFR § 1.420(a), (b) and (c).

³² 47 CFR §§ 1.1200 *et seq.*

³³ 47 CFR § 1.1208.

³⁴ 47 CFR § 1.1204(a)(10).

³⁵ 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).

³⁶ 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.

17. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,³⁷ do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the Rules.³⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³⁹ 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 2002.⁴⁰

18. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

19. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau at Joyce.Bernstein@fcc.gov; Emily Harrison, Video Division, Media Bureau at Emily.Harrison@fcc.gov; or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov.

V. ORDERING CLAUSES

20. **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 Act, 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*.

21. **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. 24-224 and RM-11988 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

³⁷ 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).

³⁸ 47 CFR § 73.622(j).

³⁹ See 44 U.S.C. §§ 3501-3520.

⁴⁰ See 44 U.S.C. § 3506(c)(4).