

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

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Amendment of Section 73.622(i),         | ) | MB Docket No. 19-18 |
| Post-Transition Table of DTV Allotments | ) | RM-11823            |
| (Gadsden and Hoover, Alabama)           | ) |                     |

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: February 5, 2019**

**Released: February 5, 2019**

**Comment Date: [15 days after date of publication in the Federal Register]**

**Reply Comment Date: [25 days after date of publication in the Federal Register]**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it a petition for rulemaking filed by ION Media License Company, LLC (ION or Petitioner), licensee of digital television station WPXH-TV, channel 45, Gadsden, Alabama (WPXH).<sup>1</sup> ION requests an amendment to the Post-Transition Table of DTV Allotments to delete channel 45 at Gadsden, Alabama, and substitute channel 45 at Hoover, Alabama.<sup>2</sup> ION also requests modification of WPXH's license to specify Hoover as its community of license pursuant to Section 1.420(i) of the Commission's rules.<sup>3</sup>

**II. BACKGROUND**

2. Section 1.420(i) of the rules provides that the Commission, during a rulemaking proceeding to amend the Post-Transition Table of DTV Allotments, may modify a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>4</sup> The Commission will apply this procedure in the limited circumstances where: (1) the new allotment will be mutually exclusive with a station's existing allotment; (2) the new allotment will result in a preferential arrangement of the allotments according to

<sup>1</sup> Petition for Rulemaking of ION Media License Company, LLC (filed Dec. 3, 2018) (Petition).

<sup>2</sup> *Id.*; see 47 CFR § 73.622(i).

<sup>3</sup> Petition at 1.

<sup>4</sup> 47 CFR § 1.420(i); see *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4873, para. 22 (1989) (*Change in Community R&O*) ("[W]e will amend the Commission's rules to provide a procedure whereby a licensee or permittee may petition the Commission for an amendment to the FM and television tables of allotments, and modification of its license accordingly, without placing its existing authorization at risk"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*Recon MO&O*).

the Commission's television allotment priorities; and (3) the new allotment will not deprive a community of its sole local transmission outlet.<sup>5</sup>

### III. DISCUSSION

3. ION's proposed reallocation is mutually exclusive with WPXH's current allotment because it is based on the technical specifications currently authorized for WPXH.<sup>6</sup> Second, ION asserts that the proposed reallocation represents a preferential arrangement of allotments under the Commission's second allotment priority by providing Hoover with its first local transmission service.<sup>7</sup> ION explains that Hoover (population of 81,619, compared to Gadsden's population of 36,856) qualifies as a community for allotment purposes because it is a much larger community than Gadsden and is the sixth largest city in Alabama.<sup>8</sup> ION notes that Hoover has an active government that provides "a full range of services such as E911 Emergency Services, Hoover Police Department, City of Hoover Fire Department, Public Works Department, and Utilities (including Water, Gas and Electricity, Garbage and Recycling)."<sup>9</sup> Furthermore, ION documents that Hoover has seven hospitals/medical centers, two historic sites, two performing arts centers, a public library, a local newspaper, and numerous sports facilities.<sup>10</sup> Finally, ION asserts that the proposed reallocation will not deprive Gadsden of its sole broadcast station as it will continue to be served by station WTJP-TV, channel 26, licensed to Trinity Christian Center of Santa Ana, Inc.<sup>11</sup>

4. Currently, the station's authorized transmission facility places the required principal community coverage over 96.2 percent of the city of Hoover.<sup>12</sup> However, ION was assigned a new channel in connection with the incentive auction and repacking process. ION's authorized post-auction facility,<sup>13</sup> which must be constructed no later than September 6, 2019, will place the required principal community signal over 100 percent of Hoover. Therefore, in addition to the proposed reallocation, ION requests a temporary waiver of Section 73.652(a)(1) of the rules.

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<sup>5</sup> *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28. The Commission determines a preferential arrangement of the allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952). The Commission will entertain a request to waive the prohibition on the removal of local service in the rare circumstances where such a removal might serve the public interest by, for example, providing a first reception service to a significantly sized population. *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

<sup>6</sup> See Petition at 1-2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Petition at 3. See also 47 CFR § 73.625(a) (stations on UHF channels must place a 48 dBu signal over the entire principal community to be served).

<sup>13</sup> See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017) and LMS File No. 0000034874.

5. We believe that ION's proposal warrants consideration. Accordingly, we seek comments on ION's requested waiver and the proposed amendment to the Post-Transition Table of DTV Allotments in Section 73.622(i) of the rules as seen below:

| City and State   | Channel No. |          |
|------------------|-------------|----------|
|                  | Present     | Proposed |
| Gadsden, Alabama | 26, 45      | 26       |
| Hoover, Alabama  | -           | 45       |

#### IV. PROCEDURAL MATTERS

1. *Initial Regulatory Flexibility Act Analysis.*—The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the Post-Transition Table of DTV Allotments, Section 73.622(i).

2. *Paperwork Reduction Act.*—This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. 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, Public Law 107-198, § 3506(c)(4).

3. *Ex Parte Rules.*—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. 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. 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. Any comment which 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.

4. *Filing Requirements.—Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 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). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). In addition to the filing procedures below, a copy of such comments should be served on the Petitioner: ION Media License Company, LLC., c/o Terri McGalliard, 601 Clearwater Park Road, West Palm Beach, FL 33401.

5. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

6. *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

7. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

9. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743.

10. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

11. *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).

12. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

13. *Additional Information.* For additional information on this proceeding, contact Darren Fernandez, [Darren.Fernandez@fcc.gov](mailto:Darren.Fernandez@fcc.gov), or Joyce Bernstein, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov), of the Media Bureau, Video Division.

## V. ORDERING CLAUSE

14. 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, and 47 CFR Sections 0.61, 0.204(b) and 0.283, **IT IS PROPOSED TO AMEND** the Post-Transition Table of DTV Allotments, 47 CFR Section 73.622(i).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau