

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

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| In the Matter of the Application of |) | |
| |) | |
| Amendment of Section 73.622(i)) |) | MB Docket No. 18-153 |
| Digital Television Broadcast Stations |) | RM-11801 |
| (Block Island and Newport, Rhode Island) |) | |

NOTICE OF PROPOSED RULEMAKING

Adopted: May 14, 2018

Released: May 15, 2018

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:

1. The Commission has before it a petition for rulemaking (Petition) filed by Ocean State Television, LLC (Petitioner or OST), licensee of television station WPXQ-TV, channel 17, Block Island, Rhode Island (WPXQ).¹ WPXQ operates on channel 17 on a shared basis with commercial television station WLWC, New Bedford, Massachusetts, also licensed to OST. OST requests an amendment of the DTV Table of Allotments to delete channel 17 at Block Island, Rhode Island, and substitute channel 17 at Newport, Rhode Island.² Petitioner further requests modification of WPXQ's license to specify Newport as its community of license pursuant to Section 1.420(i) of the Rules.³

2. Section 1.420(i) of the Rules provides that the Commission, during a rulemaking proceeding to amend the Table of 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.⁴ The Commission will apply this procedure in the limited circumstances in which: (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 the Commission's television allotment

¹ Ocean State Television, LLC, Petition for Rulemaking, as amended (filed Dec. 12, 2017) (Petition). OST filed a supplement to its Petition on April 18, 2018. Ocean State Television, LLC, Supplement to Petition for Rulemaking, at 2 (Supplement).

² 47 CFR § 73.622(i).

³ Petition at 1-2. Petitioner also requested, to the extent necessary, a waiver of the Commission's freeze on the filing of petitions for digital channel substitutions. However, such a request is no longer necessary because the Commission partially lifted the freeze on the filing of such petitions on January 12, 2018. *Media Bureau Partially Lifts the Freeze on the Filing of Petitions for Rulemaking to Change Full Power Television Stations' Communities of License*, Public Notice, 33 FCC Rcd 151 (MB 2018).

⁴ 47 CFR § 1.420(i); *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*), recon. granted in part, 5 FCC Rcd 7094 (1990) (*Recon MO&O*).

priorities; and (3) the new allotment will not deprive a community of its sole local transmission outlet.⁵ Generally, the Commission believes that its prohibition on the removal of a community's first local service is justified because such a removal is presumptively inconsistent with the public interest.⁶ However, the Commission will entertain a request to waive its general prohibition on the removal of a community's sole first local service in the rare circumstance where such a removal might serve the public interest, for example, providing a first reception service to a significantly sized population.⁷

3. The Petitioner does not propose any changes in WPXQ's authorized facilities and will continue to provide a signal encompassing both Newport and Block Island from its currently authorized transmission facilities.⁸ The Petitioner asserts that Newport qualifies as a community for allotment purposes, is deserving of its first local television service,⁹ and that "if the Commission were making an initial choice between these two communities for a new service allotment, Newport would unquestionably be the preferred community for a first local service."¹⁰ The Petitioner also asserts that "substantial public interests weigh heavily in favor" of reallocating WPXQ to Newport.¹¹ According to the Petitioner, Newport is not only a larger community than Block Island (Newport's population of 24,027 vs. Block Island's population of approximately 1,000),¹² but also "has more of every type of public service and cultural indicia that the Commission generally considers in allotting local services."¹³ For example, Petitioner claims that unlike Block Island, Newport has a "robust local government" and is the county seat of Newport County.¹⁴ Petitioner also claims that Newport has a diverse local economy with the U.S. Navy being the largest employer (approximately 14,922 employees); has a historical significance as it once was "one of the largest and most important colonial seaports in the British Empire before the American Revolution;" has 27 places of worship, 11 museums, and five performing arts centers; and has several colleges, including the U.S. Navy War College and Naval Undersea Warfare Center.¹⁵ Furthermore, although Block Island will lose its first local service in the proposed reallocation, the Petitioner asserts that the proposed reallocation "will cause no public harm" because Block Island will not only continue to be served by five full-power commercial and one full-power non-commercial television stations,¹⁶ but will also continue to receive "exactly the same over-the-air service from Petitioner that they

⁵ *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) (*Sixth Report and Order*).

⁶ *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

⁷ *Id.*

⁸ Petition at 3.

⁹ *Id.* at 4.

¹⁰ Supplement at 2.

¹¹ *Id.* at 1.

¹² Petition at 4 (citing "U.S. Census Bureau American Fact Finder," available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml).

¹³ Supplement at 2; *see also* Supplement, Exhibit A (Supplement Exhibit A).

¹⁴ Petition at 4.

¹⁵ *Id.* at 4-6; Supplement at 2; Supplement Exhibit A.

¹⁶ Petition at 6.

are receiving today.”¹⁷ Moreover, Petitioner states that it is also “willing to commit to continuing to provide over-the-air or other direct service to Block Island viewers . . .” in the event that it decides to change or relocate its authorized transmission facilities.¹⁸ Therefore, according to the Petitioner, the proposal would result in a preferential allotment by providing Newport with its first local full-power television service in satisfaction of the Commission’s second allotment priority, which is also consistent with Commission precedent and consistent with the public interest.¹⁹

4. We believe that the Petitioner’s proposal warrants consideration. Accordingly, we seek comment on whether the Petitioner has provided sufficient evidence indicating that its proposal to amend the DTV Table of Allotments in Section 73.622(i) of the Rules, as seen below, is consistent with the public interest:²⁰

| City and State | Channel No. | |
|----------------------------|-------------|----------|
| | Present | Proposed |
| Block Island, Rhode Island | 17 | - |
| Newport, Rhode Island | - | 17 |

5. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments on or before 30 days after publication in the Federal Register and reply comments on or before 45 days after publication in the Federal Register. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. 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 (*see* 47 CFR Section 1.420(a), (b) and (c)). Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioners’ counsel as follows:

Ocean State Television, LLC
c/o Cooley LLP
John R. Feore, Jr., Esq.
Jason Rademacher, Esq.
1299 Pennsylvania Avenue, N.W., Suite 700

¹⁷ Supplement at 2. The Commission considers a community “well-served” when it is served by at least five full-power over-the-air signals. *See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007).

¹⁸ Supplement at 2.

¹⁹ Petition at 6 -7 (citing *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Ardmore, Oklahoma and Sherman, Texas)*, Report and Order, 7 FCC Rcd 4864 (1992); *Amendment of Section 73.606(b), Table of Allotments, Digital Television Broadcast Stations (Columbia and Edenton, North Carolina)*, Report and Order, 20 FCC Rcd 12457 (Vid. Div. 2005)).

²⁰ *Supra* para. 2.

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6. Parties must file an original and a copy of each filing.²¹ Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters Building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, Maryland 20701. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to FCC Headquarters at 445 12th Street, S.W., Washington, D.C. 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs/>. Online filing is optional. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.²² **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.²³ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

7. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554. All filings are also available at <https://www.fcc.gov/ecfs/>.

8. 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 DTV Table of Allotments, Section 73.622(i). 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).

9. For further information concerning the proceeding listed above, contact Darren Fernandez, Video Division, Media Bureau, at darren.fernandez@fcc.gov. For purposes of this restricted notice and comment rule making 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.

²¹ See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1602, para. 21 (2011).

²² 47 CFR § 1.419(d).

²³ See 47 CFR § 1.7.

10. 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 DTV Table of Allotments, 47 CFR Section 73.622(i).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau