

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Amendment of Section 73.622(i))
Table of Allotments,)
Digital Television Table of Allotments)
(Scottsbluff, Nebraska and)
Sidney, Nebraska))

MB Docket No. _____
RM-_____

Accepted / Filed

To: Office of the Secretary
Attn: Video Division, Media Bureau

NOV 24 2015

Federal Communications Commission
Office of the Secretary

PETITION FOR RULE MAKING

Gray Television License, LLC (“Gray”), proposed assignee of the license of digital television station KDUH-TV,¹ and New Rushmore Radio, Inc. (“New Rushmore”), licensee of KDUH-TV, by and through its attorneys, and pursuant to Section 307(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.420 of the Commission’s rules,² hereby submit this Petition for Rulemaking (“Petition”) to request that the Commission amend Section 73.622(i) of its Rules, the DTV Table of Allotments, to delete Channel 7 at Scottsbluff, Nebraska and substitute Channel 7 at Sidney, Nebraska, effective after closing of the proposed assignment of KDUH-TV to Gray (together, Gray and New Rushmore are the “Petitioners”). No change in facilities would be required to effectuate this reallocation. Pursuant to Section 1.420, Petitioners further request that the license for KDUH-TV also be modified to specify the new community of license without allowing competing applications.³ As set forth herein, grant of this Petition will

¹ See FCC File No. BALCDT-20150917ADD.

² 47 U.S.C. § 307(b); 47 C.F.R. § 1.420(i).

³ Modification of FM and TV Authorizations to Specify a New Community of License, *Report and Order*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

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represent a preferential arrangement of allotments by affording Sidney its first local full-power television service. To the extent necessary, Petitioners request waiver of the Commission's "freeze" on the filing of petitions for digital channel substitutions.⁴

Pursuant to Section 307(b) of the Communications Act of 1934, as amended, the Commission must provide a "fair, efficient and equitable distribution of radio service" among the various States and communities in the country.⁵ In considering a proposal to reallocate a television station from one community to another, the Commission compares the existing allotment and the proposed allotment to determine whether or not the proposal will result in a preferential arrangement of allotments.⁶ In making this determination the Commission has long applied a series of five allotment priorities. Those television allotment priorities are to "(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."⁷ Reallocation of KDUH-TV's Channel 7 from Scottsbluff to Sidney would represent a preferential allotment pursuant to Priority 2, as it would provide Sidney with its first local full-power television service.

Petitioners do not propose any change in KDUH-TV's licensed facilities and, as a result,

⁴ Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately, Public Notice, 26 FCC Red 7721 (2011) ("*Freeze Notice*").

⁵ 47 U.S.C. §307(b).

⁶ *E.g.*, North Pole and Plattsburg, New York, *Report and Order*, 26 FCC Red 32, 33 (2011), *citing* Amendment of Section 3.606 of the Commission's Rules and Regulations, *Sixth Report and Order*, 41 FCC 148, 167-173 (1952).

⁷ *Id.*

this proposal does not implicate Priority 1. Nor will the proposed change of community of license create any new interference to any other television station or other licensed operation. As shown in Exhibit A hereto, KDUH-TV will provide a City Grade signal encompassing the community of Sidney from the station's currently authorized transmission facilities.

Sidney qualifies as a community for allotment purposes. Sidney is the county seat of Cheyenne County and the largest city in the county.⁸ The City of Sidney had a 2010 Census population of 6,757 people.⁹ Despite its size and importance, there are currently no full-power television stations licensed to Sidney. Accordingly, an allotment at Sidney would qualify for consideration under Priority 2 as the community's first local service.

Scottsbluff, Nebraska would also remain well-served after reallocation of KDUH-TV to Sidney. Full-power commercial television station KSTF(TV) would remain licensed to Scottsbluff. Nor would the proposed reallocation deprive Scottsbluff of any existing reception service, as Petitioners do not propose any change in the station's authorized service area.

Reallocation also would provide substantial public interest benefits. KDUH-TV's current community of license, Scottsbluff, Nebraska, is part of the Cheyenne-Scottsbluff DMA. Cheyenne, Wyoming is largest city and economic hub of this DMA. KDUH-TV's contour and natural service area, however, is squarely within the panhandle of western Nebraska. The station's contour does not reach Cheyenne. As a result, KDUH-TV cannot fully compete or serve its DMA. Reallocation of KDUH-TV to Sidney would remove KDUH-TV from the Cheyenne DMA, where it is not competitive, and ensure that the station's community of license more closely fits with its actual service contour. Moreover, to further its commitment to serving

⁸ See About Cheyenne County, available at <http://www.cheyennecounty.net/#!/about-us/c1se>.

⁹ See United States Census Bureau American Fact Finder, available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

western Nebraska, upon consummation of its acquisition of KDUH-TV, Gray intends to operate the station as a satellite of Gray's station KNOP-TV, North Platte, Nebraska. By removing KDUH-TV from the Cheyenne DMA and then combining KDUH-TV with KNOP-TV, Gray can better serve residents of western Nebraska.

Western Nebraska has been underserved for decades. Historically, much of western Nebraska has been assigned to the Denver DMA. Thus, much of the "local" news provided by other broadcasters for residents of western Nebraska originates from several hundred miles away in Denver. Although KDUH-TV has provided some local news and information programming for its viewers, KDUH-TV has operated as a satellite for KOTA-TV in Rapid City, South Dakota. Thus, much of the news on the station is produced in Rapid City with a South Dakota focus. Combining KDUH-TV with KNOP-TV and using resources from Gray's stations in Lincoln (the capital of Nebraska and home of the University of Nebraska) and Omaha (Nebraska's largest city) will reorient the station squarely to serving its Nebraska viewers, and it will bring a tremendous in-state presence to these "orphan counties" in western Nebraska.

KDUH-TV will be the premier (and only) source of in-state local news for many residents in western Nebraska. Indeed, Congress recently acknowledged the value of providing television broadcast station signals that originate from an in-state station.¹⁰ Congress established five factors that the FCC should use to consider market modifications. One of those factors was whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence.¹¹ Only KDUH-TV, together with KNOP-TV and Gray's other Nebraska-based stations can provide a full slate of highly valued, in-state local news and public affairs programming to the underserved residents of

¹⁰ STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014).

¹¹ *Id.*

western Nebraska.

For the first time, over-the-air television service available in large portions of western Nebraska would broadcast news produced in, for, and about Nebraska. Western Nebraska's citizens will finally have full news coverage about Nebraska's political, business, and civic leaders. Gray's network of NBC-affiliated stations in Nebraska will also provide news from throughout the state, including coverage of the University of Nebraska and its beloved Cornhuskers. Gray can also leverage its Washington, DC news bureau to provide viewers with coverage of their congressional delegation and political matters of local importance. Finally, KDUH-TV's commercials and PSAs will feature Nebraska businesses, political candidates, and organizations.

Altogether, Petitioners' proposal will improve service for more than 80,000 Nebraska residents. Changing KDUH-TV's community of license to Sidney and removing the station from the Cheyenne DMA is a key component of that plan. As set forth in Gray's application to acquire KDUH-TV, reallocation of the station to Sidney, Nebraska will simplify the treatment of the station under the Commission's multiple ownership rules and thus lead to the public interest benefits described above.

To the extent necessary to enable grant of this Petition, Petitioners request waiver of the Media Bureau's current "freeze" on the filing of petitions for digital channel substitutions. The Media Bureau implemented the freeze in May 2011 in preparation for the incentive auction to "permit the Commission to evaluate its reallocation and repacking proposals and their impact on the Post-Transition Table of DTV Allotments."¹² Grant of the instant Petition would have no impact on the Post-Transition Table of DTV Allotments because the proposed change of community of license does not involve any proposed change in facilities. Thus, waiver of the

freeze is justified.

Waiver of the freeze would be consistent with precedent. In a similar situation during the initial stages of the DTV transition, the Commission recognized that a change in community of licensee unaccompanied by a change in channel or facilities would not impact the Table of Allotments.¹³ More recently, the Video Division waived the current freeze to permit a change in community of license for a station that did not propose any change in authorized facilities.¹⁴ Because the petitioner in that case was “only requesting a change in its community of license, with no changes in its technical facilities” the Division determined that “granting its proposal does not undermine our need for a stable database” of technical facilities in connection with evaluating reallocation and repacking options and, thus, granting a waiver of the freeze did not harm the public interest.¹⁵

Given that Petitioners’ request is consistent with recent precedent and given the tremendous public interest benefits from reallocating KDUH-TV’s community of license, Petitioners respectfully request that the Commission issue a Notice of Proposed Rulemaking seeking comment on whether the DTV Table of Allotments should be amended to delete Channel 7 at Scottsbluff, Nebraska and substitute Channel 7 at Sidney, Nebraska, effective after closing of the assignment of KDUH-TV to Gray. If this Petition is granted, Gray will file all necessary applications to modify its’ authorizations for KDUH-TV to specify Sidney as the

...continued

¹² *Freeze Notice.*

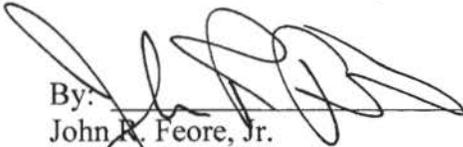
¹³ Johnstown and Jeannette, Pennsylvania, *Report and Order*, 12 FCC Red 10300, 10301 (1997), *citing* Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Further Notice of Proposed Rulemaking*, 11 FCC Red 10968, 10992 (1996).

¹⁴ Seaford and Dover, Delaware, *Report and Order*, 29 FCC Rcd 4773 (Med. Bur. 2014).

¹⁵ *Id.*, 29 FCC Rcd at 4788.

station's community of license.

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November 24, 2015

Respectfully submitted,

NEW RUSHMORE RADIO, INC.

By: _____ /s/_____
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EXHIBIT A

Technical Exhibit

Engineering Statement
Change of Principal Community
 prepared for
Gray Television Licensee, LLC
 KDUH-TV Ch. 7 Facility ID 17683

Gray Television Licensee, LLC ("Gray") is the proposed assignee (BALCDT-20150917ADD) of the license of digital television station KDUH-TV, Channel 7, Scottsbluff, NE, Facility ID 17683. This statement and accompanying map support a Petition for Rulemaking which proposes that 47 C.F.R. 73.622(i) (Post-Transition Table of DTV Allotments) be amended to change KDUH-TV's principal community to Sidney, NE.

A summary of KDUH-TV's technical operation is provided in the following table.

KDUH-TV Licensed Technical Parameters

License File Number	BLCDT-20050914AAH
Channel	7
Antenna Site Location (NAD-27)	41° 50' 28" N-Lat 103° 04' 27" W-Lon
Effective Radiated Power	32 kW nondirectional
Antenna Center of Radiation Height	475 meters above average terrain 1742.4 meters above mean sea level

No change in the KDUH-TV technical operation is proposed, therefore there will be no service contour expansion,¹ no change in any interference caused to other stations, and no impact to KDUH-TV's protection and spectrum usage rights through the incentive auction. As described in the accompanying petition, *Gray* seeks a waiver as necessary of the "freeze" on the filing of digital television channel substitutions.² Grant of the petition will result in a first local full-power television service to Sidney, while Scottsbluff will continue to be served by full-power commercial television station KSTF(DT) (Facility ID 63182).

¹"Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate," DA 13-618, Public Notice, released April 5, 2013.

²"Freeze On The Filing of Petitions For Digital Channel Substitutions, Effective Immediately," DA 11-959, Public Notice, released May 31, 2011.

The map supplied as Figure 1 depicts the KDUH-TV predicted coverage contours corresponding to the licensed technical parameters described above. The contour locations were calculated pursuant to §73.625(b) using USGS digitized 3 arc-second terrain data. This map includes the boundaries of Sidney, NE based on 2010 US Census data. As demonstrated thereon, the proposed principal community change complies with §73.625(a)(1), as the entire principal community boundaries will be encompassed by the 43 dB μ contour.

Under penalty of perjury the undersigned hereby certifies that the foregoing statement and accompanying map were prepared by him, and that they are true and correct to the best of his knowledge and belief.



Joseph M. Davis, P.E.
November 4, 2015

Chesapeake RF Consultants, LLC
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List of Attachments

Figure 1 Coverage Contour Map

Figure 1
Coverage Contours
KDUH-TV Facility ID 17683
Ch. 7 32 kW 475 m
 prepared for
Gray Television Licensee, LLC
 November, 2015

