

**ORIGINAL**

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_) )  
In The Matter Of ) )  
 ) )  
Amendment of Section 73.622 ) )  
Table of Allotments ) )  
Television Broadcast Stations ) )  
(Chandler, AZ) ) )  
\_\_\_\_\_)

MM Docket No. \_\_\_\_\_  
RM No. \_\_\_\_\_

To: Chief, Allocations Branch

**AMENDMENT TO PETITION FOR RULE MAKING**

Mitchell Broadcast Enterprises, L.L.C. ("MBE"), by its counsel, hereby amends its pending petition for rule making for a new television allotment for Chandler, AZ, by substituting digital channel 55 for NTSC channel 67 requested in MBE's original petition. Thus, MBE proposes to amend Section 73.622 of the Commission's rules as follows:

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Chandler, AZ	--	55

**I. Background**

MBE is filing this amendment to its petition for rule making pursuant to the Commission's Public Notice, 14 FCC Rcd 19559 (1999) ("Window Notice"), announcing the opening of a window for the filing of, among other things, amendments to pending petitions for rule making that had sought to amend the TV Table of Allotments to add a new NTSC television allotment. MBE had sought allotment of NTSC channel 67 for Chandler's first local television service. The Commission cannot grant MBE's application for channel 67 because the Commission has

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reallocated channels 60 to 69 to non-broadcast services. As a result, under the Window Notice, MBE was afforded the opportunity to file the instant petition for rule making to specify a new channel. As indicated in the attached Engineering Statement of WES, Inc., the proposed allotment is free of any short-spacings to all digital and NTSC stations and does not cause any interference to any Class A stations.

## **II. The Public Interest Compels Grant of This Petition**

MBE seeks to change its proposal for a new allotment to Chandler, AZ, to a DTV since no suitable NTSC Channel can be found, consistent with the Window Notice, so that an additional service to a population of 2,227,768 persons can be made available. Allotment of DTV channel 55 will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient, and equitable distribution of television broadcast stations among the various states and communities. See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to “secure the maximum benefits of radio to all the people of the United States”); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to “secure local means of expression”). As with MBE’s original proposal, a grant of this amendment would promote the second allotment priority set forth in the Sixth Report and order in Docket Nos. 8736 and 8975, 41 FCC 148,167 (1952) of providing each community with at least one television station.

In addition, grant of MBE’s petition may foster the emergence of a new national television network by establishing an outlet in a top 100 television market (17) .

In the past, the Commission has relied on these public interest objectives in making new allotments. In Docket No. 13340, Interim Policy on VHF Television Channel Assignments, 21 RR 1695 (1961), recon. denied, 21 RR 1710a (1961) (“Interim Policy”), the Commission

instituted a rule making proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system.

The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacing.

**The Channel 55 Application being fully spaced should be even more favorably considered.**

The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a “squeeze in” procedure would be considered. Many of these proposals, as well as those which arose out of the Commission’s Interim Policy, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. See, e.g., Grand Rapids, Michigan, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market),<sup>1</sup> Rochester, New York, 21 RR 1748a (1961)(same).

Similarly, in the VHF Drop-In Proceeding, 81 FCC 2d 233 (1980), the Commission granted requests for waiver of Section §73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each short-spaced allotment was subject to the condition that the new

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<sup>1</sup> In Grand Rapids, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of channel 7 for a Channel 9 allotment at Alpena, Michigan. Id. at 1745. The Commission’s action was designed to alleviate the “critical shortage of competitively comparable facilities in major markets.

station provide equivalent protection to the existing station to which it was short-spaced. Id. at 234.

In granting the waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from Commission precedent.<sup>2</sup> Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. Id. at 253. Moreover, on reconsideration, the Commission observed that application of the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the Sixth Report and Order in Docket Nos. 8736 et. al., Amendment of Section 3.606 of the Commission's Rules and Regulations, 41 FCC 148 (1952) ("Sixth Report and Order").

The public interest benefits that would result from a grant of MBE's amended proposal are the same public interest objectives which the Commission sought to foster in the VHF Drop-In Proceedings and the Interim Policy, and yet unlike as in those proceedings, no waiver of the Commission's rules is required in order to grant MBE's amended proposal here. The public interest fully supports a grant of MBE's amended proposal.

### **III. Conclusion**

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...” 21 RR at 1745.

<sup>2</sup> Despite the Commission's Interim Policy, there had been no short-spaced VHF allotments in the continental United States prior to its decision in VHF Top 100 Markets. 81 FCC 2d at 239.

Wherefore, Mitchell Broadcast Enterprises, L.L.C. respectfully requests that as proposed in this amendment to MBE's original petition for rule making, the Commission initiate a rule making proceeding to amend Section 73.606 (b) of its rules, the television Table of Allotments to add an allotment for digital channel 55 for Chandler, AZ.

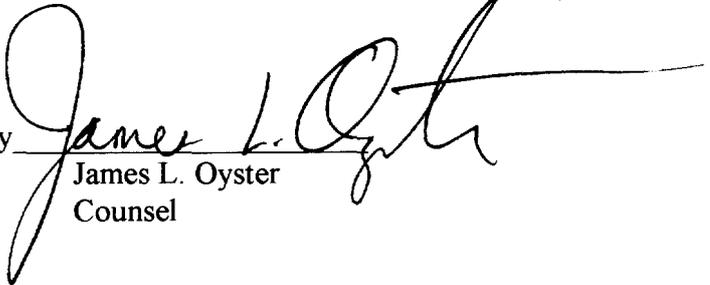
Respectfully submitted,

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July 17, 2000

MITCHELL BROADCAST ENTERPRISES, L.L.C.

By   
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**ENGINEERING EXHIBIT  
PETITION TO MODIFY THE TABLE OF  
ALLOTMENTS TO SPECIFY A  
DISPLACEMENT CHANNEL TO  
SUBSTITUTE FOR CHANDLER, AZ  
CHANNEL 67**

July 11, 2000

**ENGINEERING STATEMENT**

**Wes, Inc.**

**DECLARATION**

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Mitchell Broadcast Enterprises, L.L.C.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 11th day of July, 2000

**Narrative Statement**

**I. GENERAL**

This engineering report has been prepared on behalf of Mitchell Broadcast Enterprises, L.L.C. in support of its request for a displacement channel (Digital Channel 55) for its pending application for Channel 67 in Chandler, Arizona

**II. ENGINEERING DISCUSSION**

The applicant originally applied for a construction permit for channel 67 in Chandler, Arizona. The applicant is precluded from going on channel 67 due to the FCC mandated elimination of television channels 60 through 69.

The applicant proposes the following site:

North Latitude: 33° 20' 02"

West Longitude: 112° 03' 40"

It is proposed to amend Section 73.622(b) of the Commission's rules, Digital Television Table of Allotments, to allot Channel 55 (716-720 MHz) for the Digital television operation of Mitchell Broadcast Enterprises, L.L.C. As demonstrated below, the proposed Channel 55 DTV operation at Chandler, AZ, will not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines. Chandler, Arizona Channel 55 would provide additional service to a population of 2,227,768 people.

The proposed NTSC Channel 55 has site availability and can operate from the proposed antenna site at 440 kilowatts omni-directional and a Height Above Average Terrain of 541 meters without adversely impact any other TV operations. The proposed Channel 55 would serve all of Chandler, Arizona within its digital service contour.

### Analog NTSC TV Allocation Situation

The attached Exhibit RM-2 demonstrates that Channel 55, Chandler, Arizona, **is free of any short-spacings to all NTSC stations.**

### Class A Situation

**The applicant does not cause any interference to any Class A Stations.**  
The applicant is free of all prohibited overlap to all Class A stations.

### DTV Allocation Situation

The attached exhibit RM-1 demonstrates that Chandler, Arizona digital channel 55 is not short-spaced to any digital channels. The applicant proposes to co-locate with Phoenix, Arizona digital channel 56, and therefore will not cause any interference to channel 56.

### **III. Summary**

The applicant must change channel from Channel 67 in Chandler, Arizona to digital channel 55, because of the FCC mandated elimination of television channels 60 through 69. On channel 55, Bartlett is clear of all interference above the FCC's guidelines to all NTSC, Digital and Class A stations.

**Exhibit RM-1  
Chandler, AZ  
July 11, 2000**

**DTV to DTV spacing Study  
by WES, Inc. Broadcast Consultants**

Digital to Digital Spacing Study

Study Location:  
Chandler, AZ Channel 55

DTV Study Station, Transmitter Coordinates: 33-20-2 N 112-3-40 W

Study distance: 429 km

\*\*\*DTV TO DTV STUDY RESULTS\*\*\*

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Phoenix	AZ	56	248.34	0.17	<32.2	32.03
Caborca	SO	55	181.74	289.17	223.70	65.47

Station is in the clear!

