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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(b),)	MM Docket No. 02-92
Table of Allotments,)	RM-10363
Digital Television Broadcast Stations.)	
(Albany, New York))	

To: Chief, Video Division

REPLY COMMENTS OF CLEAR CHANNEL BROADCASTING LICENSES, INC.

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), by its attorneys and pursuant to Section 1.420 of the Commission's rules, 47 C.F.R. § 1.420, hereby submits its reply comments in further support of the *Notice of Proposed Rule Making* ("NPRM") proposing to amend the Table of Allotments for the digital television ("DTV") service to change the initial DTV channel allotment for station WXXA-DT, Albany, New York, from Channel 4 to Channel 7.¹ CCBL is the licensee of WXXA-TV, Albany, New York, and the proponent of the DTV channel change.

As CCBL stated in its initial comments, it proposes to change its DTV channel allotment from Channel 4 to Channel 7 in order to eliminate the potential for interference by WXXA-DT to videocassette recorders (VCRs) in its service area, which typically operate on channels 3 or 4. In addition, it is widely acknowledged, though not explicitly stated in the comments, that the "RF energy from impulse noise generally decreases as the DTV channel number increases.

Therefore, there is significantly more impulse noise energy contained in the low VHF band

¹ See *Notice of Proposed Rule Making*, MM Docket No. 02-92, RM-10363 (rel. May 3, 2002).

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(channels 2 through 6).”² Thus, changing WXXA-DT’s allotment from Channel 4 to Channel 7 will decrease the station’s susceptibility to impulse noise interference and thereby improve its service to the public. Moreover, by moving to DTV Channel 7, WXXA-DT will be able to share an antenna and tower with another high VHF DTV station, WNYT-DT, Channel 12, Albany, New York, resulting in appreciable cost savings and thereby speeding the initiation of DTV service to the Albany area. In short, there is substantial support for the proposed channel change.

DTV Channel 7 does not suffer from any of the potential interference issues mentioned above, and it is available for allotment to Albany, New York. CCBL has demonstrated that the proposed allotment would be in compliance with the Commission’s principal community coverage requirements.³ More importantly, CCBL has demonstrated that WXXA-DT’s proposed channel change will not result in any unacceptable interference to any other authorized DTV broadcast station, DTV allotment or analog television station pursuant to Section 73.623(c)(2) of the Commission’s rules,⁴ or have any adverse interference effects on any low power television or Class A television facilities. The Commission concurred with these assessments in the *NPRM*.⁵

Despite these uncontroverted facts, United Communications Corporation (“United”) and American Broadcasting Companies, Inc. (“ABC”), filed comments⁶ opposing the channel

² See 8VSB/COFDM Comparison Report at 55 (December 2000). Impulse noise is defined as “noise originating from man-made sources that include power-line insulator arcing, electrical motor noise, automobile ignition noise, etc.” *Id.*

³ See 47 C.F.R. § 73.625(a).

⁴ See 47 C.F.R. § 73.623(c)(2).

⁵ *NPRM* at 1 (“DTV Channel 7 can be substituted for DTV Channel 4 at Albany, New York, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) In addition, we find that this channel change is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2).”).

⁶ United failed to submit its comments in a timely manner. In its Petition for Leave to Submit Comments, United claims that counsel believed that the comments could be filed electronically and attempts to blame the Commission for “confusion associated with a transition to electronic filing that, unfortunately, is not yet complete.”

change. United and ABC claim that the *de minimis* interference to their stations—WWNY-TV, Carthage, New York, and WABC-TV, New York, New York, respectively—somehow renders the proposed channel change unacceptable. Their claims are unfounded and contrary to the Commission’s policies. In its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, the Commission announced that it was “replacing the current standard that specifies that changes in DTV operations may not cause any new interference with a new *de minimis* standard Under this new *de minimis* standard, stations will be permitted to increase power or make other changes in their operation . . . where the requested change would not result in more than a 2 percent increase in interference to the population served by another station.”⁷ CCBL has demonstrated, the Commission has acknowledged, and United and ABC have not disputed, that the proposed channel change satisfies this standard.

Nonetheless, United contends that the Commission should view the *de minimis* interference standard as “merely an initial hurdle,” while ABC advances the novel argument that stations on DTV channels 3 or 4 must further “justify” a requested channel reallocation, even where the requested change satisfies the *de minimis* standard, lest the Commission and its staff devote “scarce . . . resources . . . to process the filings.” Again, their claims are unfounded. In adopting the *de minimis* standard, the Commission rejected such suggestions and clearly stated that it did “not find that a more complicated standard that would take into account aggregate interference, include different levels of interference and geographic considerations . . . is

(Continued . . .)

Had counsel read the *NPRM*, however, there would have been no such “confusion.” The *NPRM* clearly states that the “Commission permits the electronic filing of all pleadings and comments in proceeding [sic] involving petitions for rule making (*except in broadcast allotment proceedings*). *NPRM* at 4 (emphasis in original).

⁷ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998) at ¶80 (“1998 DTV Order”).

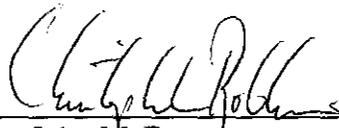
necessary. Such a standard would also be more complex and difficult for broadcasters and the Commission to apply and administer.”⁸

In sum, CCBL has adequately supported its proposal to change the initial DTV channel allotment for station WXXA-DT, Albany, New York, from Channel 4 to Channel 7. The channel change complies with all Commission rules and policies including, most importantly, the *de minimis* interference standard, and United and ABC have not, and cannot, show otherwise. Indeed, the Commission has already stated its belief that the proposal “warrants consideration.”⁹

CCBL reiterates its present intention to apply for DTV Channel 7 at Albany, New York, if it is allotted and, if authorized, to build a DTV facility on that channel. Accordingly, CCBL respectfully requests that the Commission amend the DTV Table of Allotments to allot and assign DTV Channel 7 (in lieu of Channel 4) to Albany, New York, for use by WXXA-DT.

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING
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⁸ *Id.* at ¶81.

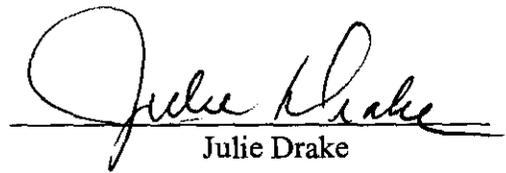
⁹ *NPRM* at 1.

CERTIFICATE OF SERVICE

I, Julie Drake, a secretary in the law firm of Wiley Rein & Fielding LLP do hereby certify that I have on this 10th day of July, 2002 caused a copy of the foregoing "Reply Comments of Clear Channel Broadcasting Licenses, Inc." to be served by first class mail, postage prepaid, upon the following:

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