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March 22, 2004

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Attention: Video Division
Media Bureau

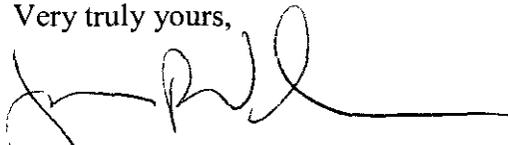
Re: WEPX(TV), Greenville, North Carolina
Facility I.D. No. 81508
Petition to Amend the DTV Table of Allotments

Dear Ms. Dortch:

On behalf of Paxson San Antonio License, Inc., licensee of commercial television station WEPX(TV), Greenville, North Carolina, we hereby transmit an original and four copies of a *Petition for Rule Making* proposing a new digital channel pursuant to the Commission's rules and policies.

If any additional information is needed in connection with this matter, please contact me.

Very truly yours,



Jason E. Rademacher

Enclosure

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

RECEIVED

MAR 22 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b)) MM Docket No. _____
DTV Table of Allotments,) RM- _____
Digital Television Broadcast Stations)
(Greenville, North Carolina))

PETITION FOR RULE MAKING TO AMEND
THE DTV TABLE OF ALLOTMENTS

Paxson Greenville License, Inc. ("Paxson"), licensee of commercial television station WEPX(TV) serving Greenville, North Carolina (the "Station"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules,¹ hereby respectfully petitions the Commission to institute a rulemaking to amend Section 73.622(b), the DTV Table of Allotments, by allocating Channel 51 as an additional DTV allotment for Greenville, North Carolina. Specifically, the DTV Table of Allotments would be amended as follows:

	<u>Present</u>	<u>Proposed</u>
Greenville, North Carolina	10c, 21, *23	10c, 21, *23, <u>51</u>

This amendment is requested so that the Station can receive a paired channel for digital operation, thereby permitting full participation in the Commission's implementation of digital television.² Channel 51 is the only in-core allotment currently available that would allow the

¹ 47 C.F.R. § 1.401.

² The Media Bureau recently dismissed a similar request by Paxson Syracuse License, Inc. for a paired channel for WSPX-TV, Syracuse, New York (the "Paxson Syracuse Petition"). See Letter from Clay C. Pendarvis to John R. Feore, Jr., Esq., dated February 17, 2004. On March 18, 2004,

Station to operate digital facilities from its authorized analog tower site consistent with the Commission's technical rules. As the attached technical exhibit demonstrates, the Channel 51 allotment satisfies the Commission's allotment criteria under Section 73.622,³ and the Station's digital operations on Channel 51 would not impermissibly impact any existing TV or DTV service. In addition, the Station is not predicted to cause impermissible interference to any protected Class A or television translator station.

The Commission granted the initial construction permit for the Station on October 21, 1997 – too late for the Station to be initially assigned a paired DTV allotment.⁴ Under the rules and policies governing the conversion to DTV, the Station, which has been on-the-air since 1999, is allowed to continue operating in analog on its single allotment until no later than the close of the DTV transition. At some point, the Station will be allowed to “flash-cut” to digital. This approach, however, would necessarily prevent the Station from participating at all in the digital transition, and the Station would only be permitted to join the digital world at the

Paxson filed an Application for Review of that decision arguing that the Bureau's decision and a subsequent Commission decision in Muskogee, Oklahoma, *Memorandum Opinion and Order*, FCC 03-321 (rel. March 2, 2004), violate previously announced Commission policies and the relevant provisions of the Communications Act.

³ As described in the attached Technical Exhibit, if this Petition is evaluated under the spacing criteria for new DTV allotments described in Section 73.623(d), the requested allotment would be considered short-spaced by 0.3 km to WRAZ(TV), Raleigh, North Carolina and by 4.8 km to WTVD-DT, Durham, North Carolina. Because the Commission would allow the station to “flash-cut” to digital on its assigned allotment, however, the proposed allotment should be treated under the evaluative criteria set forth in Section 73.622(c) of the Commission's rules. As the Technical Exhibit shows, when evaluated under these criteria, the proposed allotment satisfies the Commission's *de minimis* interference criteria.

⁴ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶¶ 8-11 (1997) (describing stations initially eligible for DTV channel allotments) (“*DTV Sixth Report and Order*”).

very end of the transition. To facilitate full participation, Paxson is requesting that the Commission assign the new Channel 51 allotment as the Station's paired DTV channel.

Following Congressional directive, the Commission stated when it issued the DTV Table that it *initially* would assign paired allotments only to those stations which either were on-the-air or held a construction permit.⁵ At that time, the Commission envisioned a highly accelerated DTV transition and accordingly adopted implementation policies designed to facilitate a rapid transition.⁶ Indeed, Congress itself subsequently codified the Commission's 2006 target date for ending the DTV transition.⁷ Thus, in 1997, the decision to leave certain stations without a paired allotment during an expectedly short transition period was not considered debilitating to single-channel broadcasters.

⁵ *DTV Sixth Report and Order*, ¶¶ 8-11, *see also* *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion And Order On Reconsideration Of The Fifth And Sixth Report And Orders*, 14 FCC Rcd 1348, ¶ 17 (1998) ("*Second MO&O*"). Congress restricted "*initial* eligibility" for DTV licenses to these stations. 47 U.S.C. § 336(a)(1) (emphasis added). Now more than five years later, it would be disingenuous to argue that the Congressional restriction on *initial* eligibility would prevent the assignment of a DTV allotment to WEPX-DT, especially in light of The Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188, 116 Stat. 594, enacted June 12, 2002 (the "*Bioterrorism Act*") (*see infra* note 10).

⁶ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd 12809, ¶¶ 6 ("The more quickly that broadcasters and consumers move to digital, the more rapidly spectrum can be recovered"), 37 (explaining that decision to allow broadcasters flexibility to broadcast non-high definition digital signal designed to facilitate "rapid transition"), 97 ("One of our overarching goals in this proceeding is the rapid establishment of successful digital broadcast services that will attract viewers from analog to DTV technology, so that the analog spectrum can be recovered") (1997) ("*Fifth Report and Order*").

⁷ The Balanced Budget Act of 1997 added a new Section 309(j)(14) to the Communications Act. That section states that "[a] broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006" unless the Commission grants an extension based on specific enumerated criteria. 47 U.S.C. Sec. 309(j)(14). *See also* *Fifth Report and Order*, ¶ 99 (setting 2006 target date for return of analog spectrum).

This is no longer the case. The transition has been more protracted and staggered than most anticipated. Questions, for example, about the robustness of the transmission format, the security of digital content, and the interoperability of cable and consumer electronic equipment have hindered the transition.⁸ Even as the pace of the transition has slowed, however, spectrum recovery for public safety services – always a significant element of the Commission’s DTV policies – has become even more important as a result of the attacks of 9/11, further compelling the need for a rapid transition. In response, the Commission, hoping to accelerate market penetration and facilitate the close of the transition, has embraced increasingly aggressive policies to place DTV stations into operation as quickly as possible.⁹ Congress responded as well. Concerned about the pace of the transition and the acceptance by consumers, Congress required the Commission to assign paired allotments upon request to a number of single-channel

⁸ See, e.g., Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, 16 FCC Rcd 5946, ¶¶ 98-105 (2001); Digital Broadcast Copy Protection, *Notice of Proposed Rulemaking*, MB Docket No. 02-230, FCC 02-231, ¶¶ 3-9 (rel. Aug. 9, 2002); Compatibility Between Cable Systems And Consumer Electronics Equipment, *Report and Order*, 15 FCC Rcd 17568 (2000).

⁹ See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment; Digital Broadcast Content Protection, *Order*, CS Docket No. 97-80; PP Docket No. 00-67; MB Docket No. 02-230, DA 03-4085 (rel. December 23, 2003) (adopting broadcast flag regulations); Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, *Second Report And Order And Second Further Notice Of Proposed Rulemaking*, CS Docket No. 97-80, PP Docket No. 00-67, FCC 03-225 (rel. Oct. 9, 2003) (adopting cable plug-and-play memorandum of understanding between cable operators and consumer electronics manufacturers); Remedial Steps For Failure to Comply With Digital Television Construction Schedule; Requests For Extension of the October 5, 2001, Digital Television Construction Deadline, *Order And Notice Of Proposed Rulemaking*, 17 FCC Rcd 9962, ¶ 16 (2002) (adopting sanctions for failure to timely construct DTV stations); Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, ¶¶ 34-36 (allowing DTV stations to commence operations at low power).

stations to promote “the orderly transition to digital television, and to promote the equitable allocation and use of digital channels.”¹⁰

It accordingly would be unreasonable at this time to continue to deny an available DTV allotment to a single-channel station such as the Station, especially when no existing service would be impermissibly impacted by the allocation. There would only be service gains in this case. Assignment of a new DTV allotment would allow the Station to become a full participant in the DTV transition and generally would facilitate the implementation of digital television. DTV is critical to the future of all broadcasters, but especially to Paxson Communications Corporation (“PCC”), parent company of the Station’s licensee. PCC has spearheaded efforts to introduce innovative digital services such as multicasting that promise to unlock to consumers the full potential of DTV.

Without a paired allotment, the Station is precluded from fully participating in the digital transition. It is not clear when the Station could or would commence DTV service – contrary to the Commission’s desire to place as many DTV stations into operation as possible. Rather than incentivizing consumers to purchase digital receivers or facilitating the return of analog spectrum, the Station would be forced to await a level of consumer equipment penetration that might justify abandoning its analog audience.

With a paired DTV allotment, the Station would ensure that existing service to viewers is preserved during the transition. Those viewers capable of receiving digital signals would receive the benefits of enhanced WEPX-DT programming. Viewers who have not purchased digital equipment would not be disenfranchised. Equally important, a new DTV allotment would

¹⁰ The Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002, § 531(a), Pub. L. No. 107-188, 116 Stat. 594, enacted June 12, 2002.

increase the amount of digital content available to viewers, thereby creating additional incentive for consumers to purchase digital equipment and facilitate the recovery of spectrum.

Obviously, the Commission understands and has embraced the merits of paired allotments. To avoid service disruption and losses, the Commission initially assigned a second allotment for digital broadcasting purposes to each existing station¹¹ – even at the expense of creating new interference to a significant number of stations.¹² Congress, too, which restricted the *initial* assignment of paired allotments, has clearly identified the benefits of assigning paired allotments to single-channel broadcasters, and in some cases has specifically directed that they be assigned. Given the renewed urgency of facilitating the digital transition, assigning a DTV allotment to the Station would be in the public interest.

Accordingly, Paxson requests that the Commission institute a rulemaking proceeding to amend Section 73.622(b) to allocate Channel 51 to Greenville, North Carolina as a paired allotment for the Station. If the Commission grants this petition and modifies the DTV Table of

¹¹ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Report and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd 3340, ¶¶ 9-13 (1992) (setting forth eligibility criteria for paired digital allotments). See generally, *Sixth DTV Report and Order*, ¶ 11.

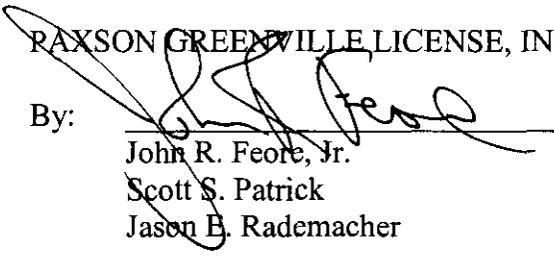
¹² See *Sixth DTV Report and Order*, Appendix B.

Allotments as requested, Paxson is committed to applying for and constructing a DTV station on Channel 51 at the earliest practical date

Respectfully Submitted,

PAXSON GREENVILLE LICENSE, INC.

By:


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Scott S. Patrick

Jason B. Rademacher

Its Attorneys

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Washington, D.C. 20036-6802
202-776-2000

Dated: March 22, 2004

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF
PETITION FOR RULEMAKING TO
MODIFY THE DTV ALLOTMENT TABLE
STATION WEPX-DT
GREENVILLE, NORTH CAROLINA

Technical Narrative

This Technical Exhibit has been prepared on behalf of television station WEPX(TV), analog channel 38, in Greenville, North Carolina. WEPX(TV) was not allotted a digital transition channel in the Memorandum Opinion and Order (MO&O) concerning reconsideration of the 6th Report and Order in MM Docket No 87-268. Therefore, WEPX(TV) is seeking a NEW DTV channel for digital operation. A search of the core band (2-51) indicates that channel 51 is the best possible channel for digital use at the present location.

WEPX-DT channel 51 can be allotted to Greenville in compliance with the principal community coverage requirements of Section 73 625(a) at the following reference coordinates:

35° 24' 09" North Latitude
77° 25' 10" West Longitude

These coordinates are the same as WEPX's current analog site. Operation on DTV channel 51 appears possible with an effective radiated power (ERP) of 1000 kW utilizing a non-directional antenna with a height above average terrain (HAAT) of 155 meters and a radiation center of 166 meters above mean sea level (AMSL).

Figure 1 is a coverage map showing the noise-limited coverage contour and the city coverage contour for the proposed facility. As shown, all of Greenville is encompassed within both contours (2000 Census).

Allocation Analysis

The proposed Rulemaking meets all of the minimum separation requirements to domestic stations and allotments except with respect to NTSC station WRAZ(TV) on channel 50 at Raleigh, North Carolina. The proposed site is located 105.7 kilometers from this station. The FCC separation requirement toward WRAZ(TV) is a distance of less than 10 kilometers or greater than 106 kilometers. Therefore the proposed site is 0.3 kilometers short with respect to WRAZ(TV). In addition, the proposed site is located 105.2 kilometers from WTVD-DT on channel 52 at Durham, North Carolina. The FCC separation requirement toward WTVD-DT is a distance of less than 24 kilometers or greater than 110 kilometers. Therefore the proposal is 4.8 kilometers short with respect to WTVD-DT. However, pursuant to Section 73.623(c), it is calculated that less than 2 percent new interference will be caused to WRAZ(TV) and WTVD-DT by the proposed WEPX-DT allotment (see Figure 2).¹

Figure 2 provides a summary of interference and service for the proposed channel 51 allotment. Determination of interference and service was based on the procedures outlined in OET Bulletin No. 69 and criteria contained in Sections 73.622 and 73.623 of the FCC's rules. It is believed that the proposed channel 51 allotment is in full compliance with the FCC's 2 percent criterion for *de minimis* impact applicable to DTV allotment modifications under Section 73.623(c)(2). There are no spacing violations or contour overlap to Class A stations.

¹ The du Treil, Lundin & Rackley, Inc. DTV interference analysis program is based on the program and procedures outlined by the FCC in the Sixth Report and Order; subsequent Memorandum Opinion and Order; and FCC OET Bulletin No. 69. A nominal grid size resolution of 2 km was employed. A Sun based processor computer system was employed.

LPTV/TV translator Impact

The proposed Rulemaking facility will not adversely impact any LPTV or TV translator stations.

Therefore, it is proposed to assign the following specifications for WEPX-DT's digital channel operation:

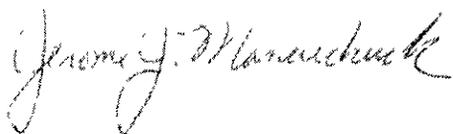
State & City	DTV Channel	DTV ERP (kW)	Antenna Radiation Center	Antenna HAAT (m)
NC, Greenville	51	1000 kW	166 m AMSL	155 m
Reference Coordinates. 35° 24' 09 N. Latitude/77° 25' 10" W. Longitude				

It is also proposed to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, as follows:

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Greenville, NC	10c, 21, *23	10c, 21, *23, 51

This instant Rulemaking petition is not contingent upon any pending or future application for construction permit for any facility.

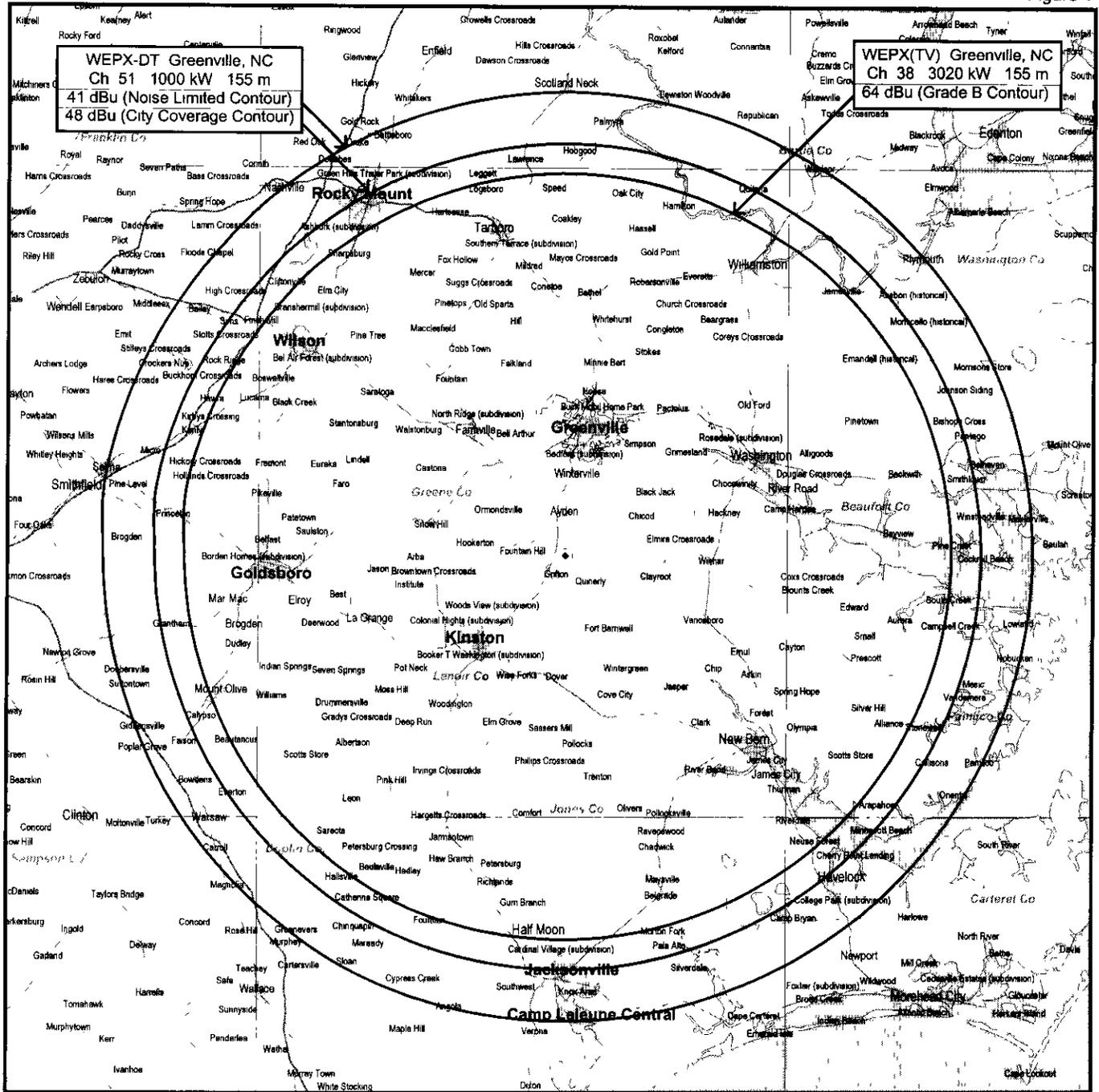


Jerome J. Manarchuck

du Treil, Lundin & Rackley, Inc
201 Fletcher Avenue
Sarasota, Florida 34237
(941) 329-6000

March 22, 2004

Figure 1



WEPX-DT Greenville, NC
 Ch 51 1000 kW 155 m
 41 dBu (Noise Limited Contour)
 48 dBu (City Coverage Contour)

WEPX-TV Greenville, NC
 Ch 38 3020 kW 155 m
 64 dBu (Grade B Contour)



PREDICTED COVERAGE CONTOURS

STATION WEPX-DT
 GREENVILLE, NORTH CAROLINA
 CH 51 1000 KW 155 M

du Treil, Lundin & Rackley, Inc. Sarasota, FL

TECHNICAL EXHIBIT
 PREPARED IN SUPPORT OF
 PETITION FOR RULEMAKING TO
 MODIFY THE DTV ALLOTMENT TABLE
 STATION WEPX-DT
 GREENVILLE, NORTH CAROLINA

Summary of Channel 51 OET-69 Allocation Analysis

Facility	Channel	Baseline Service Population (1990)	Net New IX Caused by Proposed (1990)	Percent of Baseline (%)
WUNP-TV, Lic. Roanoke Rapids, NC	36	No Interference Predicted		
WHOA-LP, CP Raleigh, NC	44	No Interference Predicted		
WRPX(TV), Lic Rocky Mount, NC	47	No Interference Predicted		
WRPX(TV), CP Rocky Mount, NC	47	No Interference Predicted		
WRAZ(TV), Lic Raleigh, NC	50	2,003,074	29,338	1.5%
WGNT-DT, Lic Portsmouth, VA	50	No Interference Predicted		
WGNT(TV), RM Portsmouth, VA	50	No Interference Predicted		
WBDC-DT, Lic Washington, DC	51	No Interference Predicted		
WBDC-DT, Alt. Washington, DC	51	No Interference Predicted		
WFMY-DT, CP Greensboro, NC	51	2,851,313	5,144	0.2%
WFMY-DT, Alt. Greensboro, NC	51	2,851,313	23,149	0.8%
WVPT(TV), Lic Staunton, VA	51	No Interference Predicted		
WTV-DT, Alt Durham, NC	52	2,304,494	46,239	2.0