

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

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In the Matter of)
)
Amendment of Section 73.622(b),) MB Docket No. 02-92
Table of Allotments,) RM-10363
(Albany, New York))

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2005

Released: June 1, 2005

By the Chief, Video Division, Media Bureau:

1. The Chief, Video Division, Media Bureau, acting pursuant to delegated authority, 47 C.F.R. §0.293, herein considers petitions for reconsideration filed by American Broadcasting Companies, Inc. (ABC) and United Communications Corporation (United) of the *Report and Order*, 19 FCC Rcd 4329 (2004), which amended the digital Table of Allotments to change the allotment for WXXA-DT, Albany, New York, from DTV Channel 4 to DTV Channel 7. Clear Channel Broadcasting Licenses, Inc. (Clear Channel), licensee of WXXA and proponent of the rulemaking, filed a consolidated opposition, and United filed a reply pleading.

2. In comments supporting its rulemaking proposal, Clear Channel stated that in addition to its compliance with the interference standards for DTV stations, its operation of WXXA on DTV Channel 7 would also reduce potential interference to videocassette recorders, would decrease the station's susceptibility to impulse noise interference, and would permit it to share an antenna and tower with another digital station, which would expedite cost-effective construction and operation. ABC, licensee of WABC-TV, Channel 7, New York, New York, and United, licensee of WWNY-TV, Channel 7, opposed Clear Channel's proposal. They claimed that operation of WXXA on DTV Channel 7 would cause interference and loss of programming to numerous viewers of their current analog service. They argued that Clear Channel did not offer any justification for its proposal sufficient to overcome that loss of service. Moreover, even though Clear Channel's proposal would affect less than 2 percent of the population served by each station, they argued that the actual number of viewers to be impacted could not be justified under the Commission's public interest mandate.

3. As set forth in greater detail in the *Report and Order*, Clear Channel's proposal complies with Section 73.623(c) of the Commission's Rules, which sets forth, among other things, the protection requirements for DTV applications with respect to other DTV stations and allotments and NTSC stations. In this case, the predicted interference from the proposed operation of WXXA-DT to each station was less than 2 percent of the population they serve, which is considered *de minimis* and therefore not a bar to the grant of the rulemaking proposal. We rejected ABC's and United's arguments that we look beyond this *de minimis* interference standard and, despite compliance with Section 73.623(c), conclude that the predicted loss of their service to certain existing NTSC viewers is inconsistent with public interest.

4. In the reconsideration petitions, ABC and United allege that the staff erroneously relied on Clear Channel's statements in granting the rulemaking petition. Specifically, the contend that the staff, which properly rejected alleged videocassette interference concerns, nevertheless relied on unsupported allegations of impulse noise interference and cost-savings to justify grant of the channel-change rulemaking. ABC and United continue to maintain that Clear Channel has offered no justification for its proposal, and its interference and cost concerns do not overcome the loss of service to the public affected by operation of WXXA.¹

5. We will deny the reconsideration petitions. Despite the fact that the rulemaking proposal meets all coverage and interference requirements, the petitioners continue to argue that Clear Channel has otherwise failed to justify the channel reallocation in light of predicted interference to WABC and WWNY. However, those stations are simply not entitled to the level of protection which they seek. Some disruption or loss of service to analog services is anticipated during the DTV transition, and the Commission's 2 percent interference standard was established to provide appropriate flexibility for construction of digital facilities while maintaining existing NTSC service.² Moreover, the Commission has encouraged the collocation of digital and analog facilities to provide the flexibility to accommodate operation of nearby stations.³ However, because the channel-change rulemaking proposal meets our technical requirements, its grant was not premised on Clear Channel's interference or cost claims as ABC and United contend. The petitioners remaining arguments opposing this proposal have been thoroughly considered in this proceeding, and reconsideration will not be granted merely to readdress matters previously raised and properly resolved.

¹ In its opposition, Clear Channel reiterates that its proposal meets all technical standards and that its impulse noise interference concerns are "not imaginary."

² As we noted in our previous decision, the predicted interference to WABC-TV and WWNY-TV is actually less than the permissible two percent limit.

³ See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 14588, 14633-35 (1997).

6. Accordingly, IT IS ORDERED, That the Petitions for Reconsideration the *Report and Order* ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kriesman
Chief, Video Division
Media Bureau