

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)
) MB Docket No.: _____
Western Pacific Broadcast, LLC)
) RM- _____
Amendment of Section 73.622(i))
Digital Television Table of Allotments)
(Seaford, Delaware and Dover, Delaware))
)

FILED/ACCEPTED

To: The Secretary

Attn: Chief, Video Division
Media Bureau

OCT - 9 2012
Federal Communications Commission
Office of the Secretary

PETITION FOR RULEMAKING

Western Pacific Broadcast, LLC (“Petitioner”), permittee of digital television station WMDE(DT), 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,¹ hereby submits this Petition for Rulemaking to request that the Commission amend Section 73.622(i) of its Rules, the DTV Table of Allotments, to delete channel 5 at Seaford, Delaware and substitute Channel 5 at Dover, Delaware. Pursuant to Section 1.420, Petitioner further requests that the construction permit for WMDE(DT) also be modified to specify the new community of license without allowing competing applications.² As set forth herein, grant of this Petition will represent a preferential arrangement of allotments by affording Dover its first

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

² 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).

local television service. To the extent necessary, Petitioner requests waiver of the Commission's "freeze" on the filing of petitions for digital channel substitutions.³

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.⁴ 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.⁵ 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."⁶ Reallocation of WMDE's Channel 5 from Seaford to Dover would represent a preferential allotment pursuant to Priority 2, as it would provide Dover with its first local television service.

Petitioner does not propose any change in WMDE's permitted facilities and, as a result, this proposal does not implicate Priority 1. Nor will the proposed change of city of license create

³ Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately, *Public Notice*, 26 FCC Rcd 7721 (2011) ("Freeze Notice").

⁴ 47 U.S.C. §307(b).

⁵ *E.g.*, North Pole and Plattsburg, New York, *Report and Order*, 26 FCC Rcd 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) ("*Sixth Report and Order*").

⁶ *Id.*

any new interference to any other television station or other licensed operation. As shown in Exhibit A hereto, WMDE will provide a City Grade signal encompassing the community of Dover from the station's currently authorized transmission facilities. Although the proposed change will reallocate WMDE to a community in the Philadelphia Designated Market Area, where Petitioner is licensee of television station WACP(DT), Atlantic City, New Jersey, common ownership of WACP and WMDE will comply with the Commission's multiple ownership rules.⁷

Dover clearly qualifies as a community for allotment purposes. Dover is the State Capital and the second largest city in Delaware. It is the county seat of Kent County and the principal city of the Dover, Delaware Metropolitan Statistical Area.⁸ The City of Dover had a 2010 Census population of 36,047 people.⁹ Despite its size and importance, there are currently no full-power television stations licensed to Dover. Accordingly, an allotment at Dover would qualify for consideration under Priority 2 as the community's first local service.

Seaford, Delaware would also remain well-served after reallocation of WMDE to Dover. Full-power noncommercial television station WDPB would remain licensed to Seaford. Nor would the proposed reallocation deprive Seaford of any existing reception service. WMDE received its initial construction permit in May 2011 and has not yet initiated service.¹⁰ Even if Petitioner initiates service prior to implementation of the proposed change in community of

⁷ 47 C.F.R. §73.3555(b). Neither WACP nor WMDE are ranked among the top 4 stations, and more than eight independent voices would remain in the market.

⁸ See Metropolitan and Micropolitan Statistical Areas and Principal Cities, available at www.census.gov/population/metro/files/lists/2009/list2.txt.

⁹ See U.S. Census Bureau American Fact Finder, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table.

¹⁰ See BNPCDT-20110330AAY, granted May 4, 2011.

license, no loss of service will occur, as Petitioner does not propose any change in the station's authorized service area.

To the extent necessary to enable grant of this Petition, Petitioner requests 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, following the release of the Commission's National Broadband Plan, which included recommendations that the Commission initiate a rulemaking to "repack" channels used by television stations to accommodate reallocation of certain spectrum currently in the broadcast television bands to other uses. To "permit the Commission to evaluate its reallocation and repacking proposals and their impact on the Post-Transition Table of DTV Allotments," the Media Bureau implemented the freeze.¹¹ Petitioner submits that, because the proposed change of community of license does not involve any proposed change in facilities, grant of the instant Petition would have no impact on the Post-Transition Table of DTV Allotments and that waiver of the freeze is accordingly justified here.

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.¹² Similarly, the community of license change proposed in this Petition will not impact the Table of Allotments and, indeed, will have no impact at all on the use of spectrum by the station. As a result, grant will in no way undermine the purposes of the freeze.

Therefore, Petitioner respectfully requests that the Commission issue a Notice of Proposed Rulemaking seeking comment on whether the DTV Table of Allotments should be

¹¹ Freeze Notice.

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

amended to delete Channel 5 at Seaford, Delaware and substitute Channel 5 at Dover, Delaware. If this Petition is granted, Petitioner will file all necessary applications to modify Petitioner's authorizations for WMDE(DT) to specify Dover as the station's community of license.

Respectfully submitted,

WESTERN PACIFIC BROADCAST, LLC

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Its Attorneys

October 9, 2012

**TECHNICAL EXHIBIT
 CHANGE OF PRINCIPAL COMMUNITY
 WESTERN PACIFIC BROADCAST LLC
 WMDE CH. 5 FACILITY ID 189357**

This statement was prepared on behalf of Western Pacific Broadcast LLC, ("WPB"), permittee of WMDE, Channel 5, Seaford, Delaware, in support of a Petition for Rulemaking to amend the DTV Table of Allotments in 47 C.F.R. 73.622(i). Specifically, WPB requests the reallocation of Channel 5 to Dover, Delaware, as that community's first local television service. WPB also requests modification of WMDE's construction permit, BNPCDT-20110330AAY, to specify Dover, Delaware as the station's community of license.

Television channels 5 and *44 are currently allotted to Seaford, which fulfills the Commission's fourth television allotment priority of providing each community with at least two television stations. A change in principal community for WMDE will not deprive Seaford of local television service as Channel *44 will be retained. The reallocation of Channel 5 to Dover is an arrangement that better serves the Commission's television allotment priorities as it will constitute a first local television service preference under the Commission's second priority. WPB further proposes to reallocate Channel 5 to Dover based upon the technical specifications currently authorized for WMDE, hence the new allotment will be mutually exclusive with the station's existing allotment and not subject to completing applications pursuant to §1.420(i). The technical facilities described in WMDE's current authorization are reflected in the following table:

Facility ID	State & City	WMDE BNPCDT-20110330AAY								
		Chan	ERP (kW)	HAAT (m)	Antenna ID	Latitude DD-MM-SS	Longitude DD-MM-SS	Area (sq km)	Population (thousand)	% Interference Received
189357	DE DOVER	5	10	144	104588	38-57-17	76-05-35	25,993.4	5,718	1.8

The attached map depicts the 28 dBu noise-limited and 35 dBu city grade service contours that correspond to the technical parameters shown in the above table. The map demonstrates that the 35 dBu contour will encompass the entire CDP boundaries of Dover in accordance with principal community coverage requirement in §73.625(a)(1). Accordingly, the contour locations were calculated using the standard prediction methodology outlined in §73.625(b).

The current Channel 5 allotment at Seaford is subject to the condition that interference from WPVI(TV) must be accepted up to 2% of population within the allotment's DTV service area. WPB acknowledges that condition will likewise apply to the new allotment.

With respect to the Commission's freeze on petitions for rulemaking to change community of license, WPB's proposal does not contemplate any technical changes to WMDE that would undermine the purpose of the freeze such as a change in transmitter location or channel. Given the fact that WPB proposes no technical changes to WMDE, a waiver of freeze is respectfully requested.

Respectfully submitted,



D. Scott Turpie
Technical Consultant

October 5, 2012

