

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

ACCEPTED/FILED

DEC 17 2013

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.622,)
Digital Television Table of Allotments,)
(Valdosta, Georgia and Moultrie, Georgia))
)

MB Docket No. _____
RM- _____

To: Office of the Secretary, Federal Communications Commission
Attn: Chief, Media Bureau

AMENDED PETITION FOR RULEMAKING

Gray Television Licensee, LLC ("Gray"), licensee of television station WSWG(TV) Valdosta, Georgia (Facility ID Number 28155, Channel 43) ("WSWG" or the "Station"), hereby submits this amended Petition for Rulemaking to modify the DTV Table of Allotments (the "DTV Table")¹ contained in Section 73.622(i) of the Commission's rules.² Specifically, Gray requests that the Commission: (1) waive its freeze on television community of license changes based on the showing of good cause contained herein;³ (2) amend the DTV Table to delete Channel 43 at Valdosta, Georgia, and add Channel 43 at Moultrie, Georgia; and (3) modify WSWG's license to specify Moultrie as its community of license.

I. INTRODUCTION AND BACKGROUND

The instant proposal is intended to reconcile the DTV Table of Allotments with marketplace realities, help ensure the long-term viability of WSWG, and bolster the Station's

¹ In response to an informal request from Commission staff, Gray submits this amended Petition to clarify that the licensee does not intend to seek modifications to the Station's technical specifications following grant of this request.

² See 47 C.F.R. §§ 1.401, 73.622(i).

³ See *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (MB 2004) ("Freeze Notice").

No. of Copies rec'd 042
List ABCDE
MB-Video 1330

service to its local audience. The proposed city of license change is a straightforward solution to a longstanding problem that will have no impact whatsoever on the planned reallocation of television broadcast spectrum.⁴ Gray proposes no technical alterations to WSWG's operations. The Station's facilities and over-the-air coverage will remain precisely the same. Thus, adoption of the proposal will have no impact on the current or future use of spectrum in these markets.

Gray's request is born of a unique and unsustainable situation. While WSWG's current city of license, Valdosta, is located in the Tallahassee, FL-Thomasville, GA Designated Market Area ("DMA") (#106), Nielsen Media Research ("Nielsen") has assigned the Station to the smaller, underserved, Albany, GA DMA (#150), where it serves as the CBS affiliate. The Commission has long recognized that television is a regional service defined more by coverage area than by the political boundaries of the community of license.⁵ Because WSWG's transmitter site and the majority of its coverage area are within the Albany DMA, the Station cannot compete effectively in the Tallahassee DMA. As Gray knows first-hand, Valdosta viewers look to another of Gray's stations, WCTV(TV), Thomasville, GA, as their local CBS affiliate. Moreover, WSWG is not carried by multichannel video programming distributors ("MVPDs") in Valdosta or anywhere else in the Tallahassee DMA.

Because of its licensed coverage area (depicted in Figure 1) and Nielsen designation, the bulk of WSWG's viewers and advertisers are located within the Albany DMA. In addition, in contrast to its situation in Valdosta and the Tallahassee DMA, the Station is distributed by cable, satellite and other MVPDs in the Albany DMA. Yet, its association with out-of-market Valdosta

⁴ See generally Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010).

⁵ See *Bessemer & Tuscaloosa, Alabama*, Memorandum Opinion and Order, 11 FCC Rcd 2967, 2967 (¶ 9) (1996).

has hampered WSWG's ability to compete in the Albany DMA and thus to serve the majority of viewers that actually receive the Station's signal.

Simply put, given its coverage area, Nielsen assignment, and the concomitant economic realities, it makes no sense for the Station to be licensed to a community located in the Tallahassee DMA. As demonstrated herein, grant of the instant request, which involves no changes to the Station's channel assignment, transmitter site, or digital footprint, but solely the specification of a new community of license for the Station located within the Albany DMA, would significantly improve WSWG's ability to serve its audience, satisfy Section 307(b) of the Communications Act, and otherwise serve the public interest.

II. DISCUSSION

Under the Commission's community of license change policies and Section 1.420(i) of the rules, *see* 47 C.F.R. § 1.420(i), the Commission may modify a station's license to specify a new community of license without affording interested parties an opportunity to file competing expressions of interest if: (a) the proposed community of license is an identifiable community; (b) the new allotment would be mutually exclusive with the old allotment; and (c) looking at the totality of factors, the new allotment would result in a preferential arrangement of allotments.⁶ As demonstrated below, Gray's proposal clearly satisfies the first two prongs of this analysis. With respect to the third, while Gray recognizes that the proposed community of license change from Valdosta to Moultrie will remove Valdosta's sole local television transmission service, the unique circumstances surrounding Gray's re-allotment request eliminate any concern about continued service to Valdosta television viewers. Moreover, the proposed change would result

⁶ *See Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("*Allotment Report and Order*"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Allotment Reconsideration Order*"); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

in considerable benefit to underserved Moultrie (and, indeed, to viewers throughout the Albany DMA). Therefore, this community of license change, which is designed simply to overcome geographic and service anomalies, is entirely consistent with the Commission's television allotment objectives and with applicable precedent.

A. Moultrie Is a Community Deserving of a DTV Channel Allotment.

Moultrie, Georgia, which currently has no local television allotment, is the largest city within and the seat of Colquitt County. Located approximately 39 miles from Albany⁷ and 41 miles from Valdosta, Moultrie has a population of 14,268, making it the third largest city in southwest Georgia. Allotment of channel 43 to Moultrie and a corresponding change in WSWG's community of license to Moultrie would bring a first local television transmission service to this vibrant community in rural Georgia.

Moultrie is known as the "City of Southern Living."⁸ It has its own city government, including a Mayor, City Manager and a City Council,⁹ and Moultrie boasts agricultural, manufacturing, service, and distribution businesses.¹⁰ The city is home to two local colleges, Moultrie Technical College and a satellite campus of Abraham Baldwin Agricultural College.¹¹ Numerous public schools, including Colquitt County School High School, two area middle schools, and six elementary schools, as well as two private schools and a number of preschools, are located in Moultrie. Moultrie is served by two hospitals, Colquitt Regional Medical Center and Turning Point Hospital, as well as the Moultrie Municipal Airport.¹²

⁷ Moultrie is not located within the Albany Urbanized Area. Accordingly, no *Tuck* showing is required. See *Faye & Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

⁸ See City of Moultrie Georgia, <http://www.moultriega.com> (last visited Sept. 24, 2012).

⁹ *Id.*

¹⁰ See Better Business Bureau, <http://www.bbb.org/columbus-georgia/accredited-business-directory/find/-/moultrie-ga> (last visited Sept. 24, 2012).

¹¹ See Moultrie Technical College, <http://www.moultrietech.edu/> (last visited Sept. 24, 2012).

¹² See Moultrie Municipal Airport, <http://www.airnav.com/airport/kmgr> (last visited Sept. 24, 2012).

With a revitalized downtown area and an award-winning Main Street program, Moultrie is a magnet for visitors to its many festivals, farm shows, swap meets and holiday festivities.¹³ Visitors to Moultrie are also drawn to its Arts Center, Museum of Colquitt County History, and the Moultrie Genealogy Odom Library.¹⁴ Moultrie is home to the Moose Moss diving facility, an eight-springboard facility that draws Olympic-caliber divers, as well as hunting preserves, two golf courses, and a YMCA.¹⁵

The requested change will align WSWG with its Nielsen designated market which, compared to Valdosta, is underserved. Currently, only three commercial television stations are licensed to communities within the Albany DMA, and only two of those stations provide local news. The nature of the market is such that Raycom's WALB(TV) in Albany, GA carries both NBC and ABC network programming on its primary and multicast channels, respectively. Barrington Broadcasting's WFXL(TV) is the Fox affiliate, and Sunbelt's WSST(TV) is an independent featuring primarily syndicated fare. Grant of the instant proposal will better enable the Station truly to become a fourth voice in the Albany DMA and serve those viewers concentrated within its signal contour, thus improving diversity and competition in the market. Conversely, as also demonstrated in Section II.C.1, *infra*, the change would have no adverse impact on viewers in WSWG's current community of license, Valdosta, Georgia.

As depicted in Figure 1, WSWG already provides city grade coverage of Moultrie, and the Station is distributed to residents in the area through Comcast, DirecTV, and Dish. As a practical matter, given that Gray proposes no changes to WSWG's service area, this request is more appropriately evaluated by considering the public interest benefits, discussed in Section II.C, *infra*, to Moultrie and the Albany DMA that will result from the Station's community of

¹³ See Tourism, http://www.moultriega.com/?page_id=32 (last visited Sept. 24, 2012).

¹⁴ *Id.*

license change.

B. The New Allotment Is Mutually Exclusive With the Existing Allotment.

As stated above, the instant proposal involves no technical changes whatsoever. Gray is not proposing to relocate WSWG's transmitter site, operate on a different channel, change its predicted community contours, or otherwise modify the area or population served by the Station's over-the-air signal. Operations will continue exactly as they have since the Station converted to full-time DTV operations. Furthermore; Gray does not intend to modify WSWG's technical specifications following grant of this Petition. WSWG's signal contour will continue to cover Valdosta, its old community of license, as well as Moultrie, its new community of license, where the Station's main studio and transmitter site already are located.

By definition, Gray's proposal satisfies the requirement that a licensee may petition for a new community of license only where "the amended allotment would be mutually exclusive with the licensee's" present allotment.¹⁶ The proposal also satisfies the requirement that it provide the required city grade coverage to its new community a license.¹⁷

C. The Proposed Change Would Serve the Public Interest.

Generally, the Commission will grant a new allotment upon a demonstration that it would serve the Commission's allotment priorities better than the existing allotment.¹⁸ As stated above, Gray recognizes that the proposed change would remove a transmission service from Valdosta. In evaluating the proposal, however, the Commission must weigh: (1) the realities of the public's expectation of continued service in the existing community of license versus (2) the

¹⁵ See Recreation Facilities, http://www.moultriega.com/?page_id=34 (last visited Sept. 24, 2012).

¹⁶ 47 C.F.R. § 1.420(i); see also *Farmington and Gallup New Mexico*, Notice of Proposed Rulemaking, 7 FCC Rcd 2382 (1992).

¹⁷ See 47 C.F.R. § 73.622.

¹⁸ See generally *Allotment Report and Order*; *Allotment Reconsideration Order*.

public benefits of re-allotment.¹⁹ Here, compelling public interest benefits will result from the community of license change to Moultrie. At the same time, the abundance of local television viewing options available to Valdosta residents will remain undisturbed.

Although the Commission generally applies a presumption against removing a community's only local transmission service, it must be reemphasized that the instant proposal amounts to no more than a change in the name of the Station's community of license. Again, Gray proposes *no modifications whatsoever* to WSWG's technical facilities. The Station's signal contour will remain unchanged, providing service to the same viewers, including viewers in Valdosta. Therefore, the instant proposal is not akin to television re-allotment proposals that involve a shift in service area or some form of tangible abandonment of the existing community of license. Moreover, as shown below, strict adherence to the Commission's stated allotment priorities²⁰ in this case actually would serve to undermine the Commission's objectives.

1. Valdosta Will Not Experience Any Change in Local Television Service

As stated above, the proposed community of license change would not disturb the *status quo* for television viewers in Valdosta. Therefore, it is consistent with precedent where, despite removal of the sole local television transmission service, the Commission approved reallocation and license modification proposals because viewers located within the city of license would not experience disruption to their current level of service.²¹ WSWG's signal will cover Valdosta in precisely the same manner it currently does. The change will have no impact on WSWG's non-existent MVPD carriage in Valdosta and the Tallahassee DMA. Valdosta residents will be

¹⁹ See *Allotment Reconsideration Order at 7094* (¶ 19).

²⁰ The television allotment priorities are (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television broadcast stations; and (5) to 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. *Id.* at 7094 & n.4.

served by exactly the same television stations that they choose among today, including over-the-air WSWG.

In fact, Valdosta is well-served by seven commercial stations, including a full complement of major network affiliates. Numerous local news bureaus afford residents coverage of matters of specific interest to the community. Because of Valdosta's geographic location and inclusion in the Tallahassee-Thomasville DMA (and attendant MVPD carriage of stations designated within this DMA — WSWG notably not among them), the reality is that Valdosta viewers consider Gray's WCTV, *not* WSWG, to be their local CBS affiliate. Indeed, WCTV, which is licensed to Thomasville, GA, has operated a news bureau in Valdosta since the 1970s. Gray currently simulcasts WCTV's local news on WSWG, and it intends to continue the simulcast arrangement after grant of this Petition. At the same time, a community of license change that would associate WSWG more clearly with the Albany DMA is necessary if the Station is to improve its financial position sufficient to enable it to offer local news programming of particular interest to the majority of viewers that reside within its service contour. Regardless, the change proposed herein will be indiscernible to viewers in Valdosta and will not cause any public interest harm.

2. Changing WSWG's Community of License Will Help to Ensure the Station's Continued Economic Wellbeing

The Commission has approved re-allotment proposals that remove a community's sole local transmission service where doing so recognizes marketplace realities and will serve to improve the petitioning station's long-term economic viability.²² Station KXII(TV), for example, proposed a move from Ardmore, Oklahoma to Sherman, Texas, in part to provide its advertisers with a more accurate audience measurement and thereby obtain increased advertising

²¹ See *Ardmore, Oklahoma and Sherman, Texas*, Report and Order, 7 FCC Rcd 4846, 4847 (¶¶ 9, 10) (1992).

revenue.²³ In granting the station's request, the Commission reasoned that there would be "benefits in recognizing . . . Station KXII(TV)'s bonds with the city of Sherman," and approved the formal relationship. Similarly, the Commission determined that removing Nogales, Arizona's sole transmission service to create a hyphenated Nogales-Tucson allotment would serve the public interest.²⁴ There, Station KZAZ argued that, from "a *de facto* view," it competed with television stations affiliated with Tucson, but that it operated at a severe disadvantage with respect to regional and national advertisers because of its "*de jure* designation as a Nogales station."²⁵ The Commission authorized the re-allotment, recognizing that Nogales could not support the station financially and that by re-licensing KZAZ to Tucson, the station would gain economic strength while continuing to serve Nogales.²⁶

Gray's re-allotment proposal is critical to WSWG's economic viability. Because of the misalignment of the station's community of license and assigned Nielsen DMA, WSWG has experienced low ratings and financial difficulties. Its *de jure* location in the Tallahassee-Thomasville DMA (despite its *de facto* physical location and viewing audience in the Albany DMA), places WSWG at a disadvantage with respect to regional and national advertisers. Syndex protection rules further inhibit WSWG's ability to compete effectively in the Tallahassee-Thomasville DMA, as it boosts a full contingent of stations broadcasting all the major (NBC, CBS, ABC, and Fox) and minor networks (CW, MyNet, Bounce, and MeTV). As

²² See *id.* at 4847 (¶ 7).

²³ See *id.*

²⁴ *Nogales and Tucson, Arizona*, Report and Order, 32 FCC 2d 885 (1972); see also *Columbia and Edenton, North Carolina*, Report and Order, 20 FCC Rcd 12457, 12461 (¶ 12) (2005) (approving a non-commercial television station's petition to remove Columbia, South Carolina's only local broadcast station in order to alleviate "geographic and service anomalies" created by Nielsen DMAs).

²⁵ *Nogales*, 32 FCC 2d at 886 (¶ 4).

²⁶ *Id.* at 888 (¶ 10). The Commission's approval was conditioned on KZAZ agreeing to maintain an auxiliary station in Nogales, continue to provide a city grade signal to Nogales, and continue to provide programming to Nogales viewers. The Commission determined that these conditions were necessary because KZAZ also sought to relocate its main studio to Tucson. *Id.* WSWG's proposal, by contrast, does not involve any physical relocation and

the CBS affiliate for the Albany DMA and with no MVPD carriage in Valdosta, WSWG simply cannot realistically compete on an equal footing in the Tallahassee-Thomasville DMA.

According to Nielsen's May 2012 rankings, for example, WSWG had an average rating and share (5:00AM Sunday – 5:00AM Saturday) of 1.0 and 4.0. In contrast, WCTV (also owned by Gray), had an average rating and share of 6.0 and 22.1 – over 5 times the audience achieved by WSWG in its own city of license. Likewise, WSWG's association with out-of-market Valdosta has hampered its competitive position in the Albany DMA, where virtually all of the station's viewers and advertisers are located. WSWG is in a distant third place to WALB(TV) and WFXL(TV) and is in danger of losing its third place ranking to WALB's secondary program stream. These difficulties not only threaten the station's economic viability, but also have limited WSWG's ability to invest in local news or other programming initiatives.

3. Granting the Petition Would Correct the Disparity between WSWG's Community of License and its Nielsen DMA Assignment

The Commission has waived its ban on removing a community's sole local television transmission service in order to eliminate inconsistencies between a station's community of license and its Nielsen-assigned DMA that unnecessarily limit the station's ability to serve the public. In one such instance, a South Carolina broadcaster licensed to Columbia, located within the Greenville DMA, petitioned for a change in its community of license because it was unable to gain DBS carriage in the Norfolk DMA.²⁷ The Commission granted the request, noting that the proposal involved "no change to the station's transmitter site, operating parameters or service area." Rather, the Commission highlighted that its grant was simply "an administrative re-

therefore raises no such coverage or programming concerns.

²⁷ See *Columbia and Edenton, North Carolina*, 20 FCC Rcd 12457 (2005). Although the station in *Columbia* was a non-commercial educational station, the Commission's concerns regarding Nielsen-created anomalies apply equally in the commercial context.

designation,” which would allow the station to “overcome geographic and service anomalies” created by a private entity’s market designations.

Gray’s proposal is a similar attempt to rectify a mismatch between WSWG’s Nielsen assignment and the FCC’s allotment table. As explained above, WSWG’s community of license/DMA misalignment has created very real financial difficulties for the station and compromised its ability to serve its audience effectively.

D. A Waiver of the Commission’s Freeze on Rulemaking Petitions is Warranted

In order to facilitate the simple community of license change outlined above, Gray seeks a waiver of the Commission’s freeze on the filing of petitions for rulemaking to change community of license.²⁸ When the Media Bureau re-imposed the freeze on petitions for digital channel substitutions in May 2011, it did so in order to evaluate the National Broadband Plan’s recommendation that the Commission initiate a rulemaking proceeding to reallocate 120 MHz of spectrum and consider methodologies or repacking.²⁹ Thus, the Media Bureau stated in its Freeze Order that it “is appropriate to freeze the acceptance of additional rulemaking petitions to change channels at this time” in order to “permit the Commission to evaluate [the National Broadband Plan’s] reallocation and repacking proposals and their impact on the Post-Transition Table of DTV Allotments.”³⁰

Since issuing the Freeze Order in May 2011, the Media Bureau has recognized that there are instances in which the public interest is served by a waiver of the freeze. The Bureau has done so where the proposed re-allotment does not undermine the purpose of the Order – that is, to maintain spectrum *status quo*. In August 2011, the Bureau released a *Notice of Proposed*

²⁸ See *Freeze Notice*, 19 FCC Rcd at 14810; see also *Commission Lifts the Freeze on the Filing of Maximization Applications and Petition for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (MB 2008).

²⁹ See *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, Public

Rulemaking in which it proposed to grant station WHRO-TV's request for re-allotment and community of license change.³¹ Stating its belief that the "public interest would be served by waiving the freeze on filing petitions for changes in community of license," the Bureau noted that WHRO's proposal, which did not contemplate any technical changes, would not interfere with the purpose of the Freeze Order.³² Here, as in the case of WHRO-TV, the proposed change will have no impact on spectrum reallocation, because it involves no change to WSWG's technical specifications or facilities. Accordingly, Gray submits that waiver of the freeze is warranted.

III. CONCLUSION

For the foregoing reasons, Gray respectfully requests that the Commission waive its freeze on the filing of rulemaking petitions to change the communities of license of television stations. Gray further requests that the Commission grant this petition and immediately commence a rulemaking proceeding to modify the allotment for Channel 43 from Valdosta, Georgia to Moultrie, Georgia and to modify the license for WSWG as proposed herein.

Notice, 26 FCC Rcd 7721(2011).

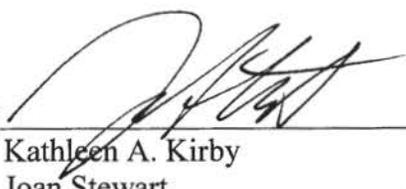
³⁰ *Id.*

³¹ See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Hampton-Norfolk, Virginia; Norfolk, Virginia-Elizabeth City, North Carolina)*, Notice of Proposed Rulemaking, 26 FCC Rcd 11304, 11306 (¶ 8) (2011).

³² *Id.* at 11304 (¶¶ 3, 8). If, however, "changing WHRO-TV's community of license would require additional technical changes ... we would not grant [the] waiver request." *Id.* at 11305 (¶ 8).

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC.

By: 

Kathleen A. Kirby
Joan Stewart
Kathryne Dickerson
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
202.719.7000
202.719.7049 (fax)

Its Attorneys

Kevin P. Latek
Secretary
Gray Television Licensee, LLC
4370 Peachtree Road, NE
Atlanta, Georgia 30319

Date: December 17, 2013