

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.622(j),) MB Docket No. 22-115
Table of Allotments, Television Broadcast) RM-11921
Stations (Butte, Montana))
)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 29, 2022

Released: November 29, 2022

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner or Scripps), the licensee of full power television station KXLF-TV, Butte, Montana (Station or KXLF-TV). The Petitioner has requested the substitution of UHF channel 15 for VHF channel 5 in the Table of TV Allotments. The Petitioner filed comments in support of the petition, as required by the Commission’s rules (rules),² reaffirming its commitment to apply for channel 15. No other comments were received.

2. We believe the public interest would be served by substituting channel 15 for channel 5 at Butte, Montana.³ According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 5, and the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service.⁴ The Engineering Statement provided with the Petition confirmed that the proposed channel 15 contour would

¹ Amendment of Section 73.622(j), Table of Allotments, Television Stations (Butte, Montana), MB Docket No. 22-115, Notice of Proposed Rulemaking, DA 22-249 (rel. Mar. 10, 2022) (NPRM). We note that the Petitioner amended its Petition on January 25, 2022 (Amended Engineering Statement) to explain that this channel change was filed contemporaneously with channel change requests Scripps filed for a number of other of its stations licensed to communities in Montana which are CBS affiliates and had contour overlap with KXLF-TV. While there were some minor changes in the size of the overlap from the various stations’ contours based on proposed changes in their contours, the population contained within the KXLF-TV loss area after accounting for the overlap remained the same. Amended Engineering Statement at 4; NPRM at n.1. Today we have also granted Petitioner’s request to substitute channel 15 for channel 5 for KXLF-TV. See Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana), Report and Order, DA No. 22-1233 (rel. Nov. 29, 2022); Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Great Falls, Montana), Report and Order, DA No. 22-1231 (rel. Nov. 29, 2022). The channel substitution rulemaking petition for KBZK(TV), Bozeman, Montana was granted on May 17, 2022. Amendment of Section 73.622(j), Television Broadcast Stations (Bozeman, Montana), Report and Order, DA No. 22-539 (rel. May 17, 2022).

² 47 CFR §§ 1.415, 1.419; see also Buffalo, Iola, Normangee, and Madisonville, Texas, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

³ In this Report and Order, the Bureau is amending the Table of TV Allotments, 47 CFR § 73.622(j), adopted in Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, Docket No. 12-268, Order, 36 FCC Rcd 15891 (2021). See NPRM at n.2.

⁴ Id. at para. 2.

continue to reach virtually all of the population within the Station's current service area and fully cover the city of Butte.⁵ An analysis using the Commission's *TVStudy* software tool indicates that KXLF-TV's move from channel 5 to channel 15 is predicted to create an area where approximately 3,000 persons are predicted to lose service.⁶ The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned CBS affiliate KPAX-TV, Missoula, Montana; KBZK(TV), Bozeman, Montana; and KRTV(TV), Great Falls, Montana. Once those other sources of CBS programming are factored into the loss analysis, the new loss area that would be created by the proposed channel substitution would contain less than 500 persons, a level of service loss the Commission considers to be *de minimis*.⁷

3. As proposed, channel 15 can be substituted for channel 5 at Butte, Montana, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,⁸ at coordinates 46° 00' 27" N and 112° 26' 33.0" W. Although the Petitioner's proposal would result in a loss for a limited number of viewers, we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the ability of all but a *de minimis* number of viewers to access CBS network programming from another over-the-air television source. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:⁹

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Great Falls, Montana	15	1000	588	252,145

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹⁰ An expedited effective date is necessary in this case to ensure that KXLF-TV can operate with improved service to its viewers as quickly as possible.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal Register, the Table of Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Butte, Montana	15, 19, 20, 24

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Scripps Broadcasting Holdings LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 15 in lieu of channel 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*). The *NPRM* also noted that the loss area would be served by a number of other full power major network stations. *NPRM* at n.7.

⁸ 47 CFR § 73.625(a).

⁹ 47 CFR §§ 73.616, 73.623. Since the proposed facility is located within the Canadian coordination zone, concurrence from the Canadian government was required and has subsequently been obtained. See *NPRM* at n.10.

¹⁰ 5 U.S.C. § 553(d)(3).

7. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-115 and RM-11921 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, (202) 418-1647, Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau