

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

In the Matter of)	
)	
Amendment of Section 73.622(j),)	MB Docket No. 22-116
Table of Allotments, Television Broadcast)	RM-11922
Stations (Missoula, 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 KPAX-TV, Missoula, Montana (Station or KPAX-TV). The Petitioner has requested the substitution of UHF channel 25 for VHF channel 7 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 25. No other comments were received.

2. We believe the public interest would be served by substituting channel 25 for channel 7 at Missoula, Montana.³ According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 7, 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 25 contour would continue to reach virtually all of the population within the Station’s current service area and fully cover the city of Missoula.⁵ An analysis using the Commission’s *TVStudy* software tool indicates that KPAX-

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Missoula, Montana)*, MB Docket No. 22-116, Notice of Proposed Rulemaking, DA 22-250 (rel. Mar. 10, 2022) (*NPRM*). We note that Scripps amended its Petition on January 25, 2022 to explain that its channel change petition was filed contemporaneously with a channel change petition for co-owned station KXLF-TV, Butte, Montana which, like KPAX-TV, is a CBS affiliate. It further explained that the loss area created by the proposed KPAX-TV channel change is partially covered by the KXLF-TV contour, and that the number of persons losing CBS service remains the same whether taking into account the current or proposed KXLF-TV noise limited contour. *Id.* 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 (Butte, Montana)*, Report and Order, DA No. 22-1232 (rel. Nov. 29, 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.

⁵ *Id.*

TV's move from channel 7 to channel 25 is predicted to create a small area where 444 persons are predicted to lose service.⁶ The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned television station KXLF-TV, Butte, Montana, which is also a CBS affiliate,⁷ and reduces the number who are predicted to lose CBS service to only 121 persons, which is a level of service loss the Commission considers to be *de minimis*.⁸

3. As proposed, channel 25 can be substituted for channel 7 at Missoula, Montana, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,⁹ at coordinates 47° 01' 02.1" N and 114° 00' 50.5" W. Although the Petitioner's proposal would result in a loss of CBS service 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:¹⁰

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Missoula, Montana	25	600	653.5	207,209

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.¹¹ An expedited effective date is necessary in this case to ensure that KPAX-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>
Missoula, Montana	*11, 20, 23, 25

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 25 in lieu of channel 7.

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.

⁶ *Id.*

⁷ *Id.*

⁸ *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.

⁹ 47 CFR § 73.625(a).

¹⁰ 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.

¹¹ 5 U.S.C. § 553(d)(3).

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-116 and RM-11922 **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