

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

In the Matter of )
)
Amendment of Section 73.622(i), ) MB Docket No. 19-118
Post-Transition Table of DTV Allotments ) RM-11838
Station WNLO(TV), Buffalo, New York )
)
Amendment of Section 73.622(i) )
Post Transition Table of DTV Allotments )
Station WUTV(TV), Buffalo, New York )

REPORT AND ORDER
(PROCEEDING TERMINATED)

Adopted: June 12, 2019

Released: June 12, 2019

By the Chief, Video Division, Media Bureau:

1. At the request of Nexstar Broadcasting, Inc. (Nexstar), licensee of television station WNLO(TV), channel 32, Buffalo, New York (WNLO), and WUTV Licensee, LLC (WUTV Licensee), licensee of television station WUTV(TV), channel 36, Buffalo, New York, the Commission has before it the Notice of Proposed Rulemaking proposing the substitution of channels for DTV stations WNLO (currently channel 32) and WUTV (currently channel 36). The Joint Petitioners also requested a waiver of the Media Bureau’s current freeze on the filing and processing of petitions for digital channel substitutions and minor modification applications for changes to existing television service areas that would increase a full power television station’s noise limited contour.

2. In response to a petition for rulemaking filed by Nexstar and WUTV Licensee, the Commission issued a Notice of Proposed Rulemaking. Nexstar and WUTV Licensee filed comments reaffirming their interest in the proposed channel substitution. No other comments were received.

3. Upon review of the record, we conclude that the public interest will be served by granting Nexstar’s and WUTV Licensee’s request to swap their channels. As discussed in the NPRM, as a result of the Commission’s Incentive Auction, co-owned WNLO (CW) and WIVB-TV (CBS), entered into a channel sharing agreement whereby WIVB relinquished its facilities on channel 39 and began operating

1 See Petition for Rulemaking of Nexstar Broadcasting, Inc. and WUTV Licensee, LLC, File No. 0000064127 (filed Dec. 19, 2018) and FCC File No. 00000064271 (filed Dec. 20, 2018) (Joint Petition). We also refer to Nexstar and WUTV Licensee as the Joint Petitioners.

2 Joint Petition at 5.

3 Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments Station WNLO(TV), Buffalo, New York, and Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments Station WUTV(TV), Buffalo, New York, MB Docket No. 19-118, Notice of Proposed Rulemaking (DA 19-516, rel. Apr. 23 2019), 2019 WL 1787028 (NPRM).

4 WUTV Licensee Comments and Expression of Continued Interest and Nexstar Comments (filed May 22, 2019).

on a shared basis on WNLO's facilities on channel 32 on April 16, 2018.<sup>5</sup> Under the channel sharing arrangement, certain viewers no longer receive WIVB over the air as they historically did, and Nexstar is unable to modify WNLO's channel 32 technical facilities, which were not changed in the incentive auction repacking process, to restore service to these WIVB viewers.<sup>6</sup> The channel substitution would allow for a more efficient allocation of UHF television channels and resolve significant over-the-air reception problems in WIVB's prior service area, while WUTV can continue to operate with no material impact to WUTV's viewers.<sup>7</sup> Under the proposed channel swap, WNLO (and WIVB) would operate on channel 36 and WUTV on channel 32. As proposed, WUTV – which was repacked from channel 14 to channel 32 and obtained a construction permit to construct its post-auction facility from the former WIVB site- would continue to operate from its existing pre-auction site, with no negative impact on WUTV's present viewers. WNLO would relocate its transmission facility to the former WIVB site, replicate WIVB's antenna pattern, and restore over-the-air service to 364,172 viewers.

4. As proposed, DTV channel 32 can be substituted for DTV channel 36 at Buffalo, New York, and DTV channel 36 can be substituted for DTV channel 32 at Buffalo, New York, in compliance with the principle community coverage requirements of section 73.625(a) at coordinates (43-01-32.2 N. and 078-55-42.1 W.) for channel 32 and (42-39-33 N. and 078-37-32 W.) for channel 36.<sup>8</sup>

5. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.622(i) of the Commission's rules<sup>9</sup> with the following specifications:

City and State	DTV Channel	DTV power (kW)	Antenna HAAT (m)
Buffalo, New York	32	1000.00	329.0
Buffalo, New York	36	800.00	415.0

6. We also conclude that good cause exists to make the channel change effective immediately upon publication in the Federal Register, pursuant to Section 553(d)(3) of the Administrative Procedure Act.<sup>10</sup> An expedited effective date will allow WUTV to promptly construct its post-auction facilities by its August 2, 2019 construction deadline.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's rules, IT IS ORDERED, That effective immediately after

<sup>5</sup> Joint Petition at 2; LMS File Nos. 00000035433 (Construction Permit) and 00000053321 (License to Cover).

<sup>6</sup> *Id.* See also LMS File No. 00000064271, Statement of John E. Hidle, P.E. in Support of a Request to Exchange DTV Channels Between WUTV-Buffalo, New York . . . and WNLO, Buffalo, New York . . . , at 2 (Engineering Statement).

<sup>7</sup> WUTV License Comments at 2.

<sup>8</sup> We have obtained Canadian concurrence to the Nexstar and WUTV Licensee proposals.

<sup>9</sup> 47 CFR §§ 73.616, 73.623.

<sup>10</sup> 5 U.S.C. § 553(d)(3).

the date of publication of this Report and Order in the Federal Register, the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission's rules, IS AMENDED with respect to the community listed below, to read as follows:

City and State	Channel No.
Buffalo, New York	32, 36

6. **IT IS FURTHER ORDERED**, That within five days of the effective date of this Order,

Nexstar Broadcasting, Inc. and WUTV Licensee, LLC shall electronically submit to the Commission minor change applications for construction permit to implement the channel swap on Form 2100, Schedule A, using the Commission's Licensing Management System (<https://enterprise.filing.fcc.gov/dataentry/login.html>).

8. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(1)(A).

9. **IT IS FURTHER ORDERED**, That this proceeding IS TERMINATED.

10. For further information concerning the proceeding listed above, contact Varsha Mangel at [Varsha.Mangel@fcc.gov](mailto:Varsha.Mangel@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

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