

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

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-138
Table of Allotments,)	RM-9896
Digital Television Broadcast Stations.)	
(Boca Raton, Florida))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 17, 2002

Released: April 22, 2002

By the Chief, Video Division:

1. At the request of The School Board of Broward County, Florida (“School Board” or “petitioner”),¹ licensee of noncommercial educational station WPPB-TV, NTSC Channel *63, Boca Raton, Florida, the Commission has before it the *Notice of Proposed Rule Making (“NPRM”)*, 15 FCC Rcd 14836 (2000), proposing the substitution of DTV Channel *40 for station WPPB-TV's assigned DTV Channel *44. Petitioner and Sherjan Broadcasting Company, Inc. ("Sherjan") filed comments. Guenter Marksteiner ("Marksteiner") filed reply comments. After the record closed, additional and unauthorized pleadings were filed by Sherjan, petitioner (and its predecessors-in-interest), and Marksteiner.²

2. As noted in the *NPRM*, petitioner asserts that the proposed substitution is an essential part of a settlement agreement between petitioner (and its predecessors-in-interest) and Marksteiner. Specifically, the settlement agreement contemplates a halt in long-standing litigation between the parties if the petitioner operates its proposed DTV facility on DTV channel 40 instead of DTV channel 44. As a result of the settlement of that litigation, petitioner will be able to expeditiously commence its service on DTV Channel *40, and DTV Channel 44 will then remain available to Marksteiner as a displacement channel for Marksteiner's WHDT-LP, Channel 55, Coral Springs,

¹ School Board is the ultimate successor-in-interest to Palmetto Broadcasters Associated for Communities, Inc. the past licensee of WPPB-TV, and the original proponent of this rulemaking proceeding. It has, however, incorporated as its own all pleadings filed by the then licensee of WPPB-TV in support of the rulemaking. Accordingly, unless otherwise noted, we will refer to the proponent of this rulemaking proposal as “petitioner”.

² Sherjan and Marksteiner filed various supplemental comments that provide decisional significant engineering analysis and will therefore be considered. School Board filed a letter advising the Commission that it had terminated its settlement agreement with Marksteiner and sought to withdraw its proposal. However, School Board subsequently withdrew that request, reaffirming its continuing interest in the channel substitution proposal at Boca Raton. The remaining pleadings do not provide information of decisional significance and therefore are not considered.

Florida.³

3. Sherjan is the licensee of Class A station WJAN-CA, operating on channel 41 at Miami, Florida. It filed comments opposing the channel substitution proposal, alleging that the proposed allotment of DTV Channel *40 at Boca Raton would be first-adjacent to WJAN-CA and would result in prohibited contour overlap with its Class A station. Sherjan claims that since WPPB-TV's channel change is not required to surmount the technical problems as contemplated by the Community Broadcasters Protection Act "(CBPA)"⁴ and is only for the convenience of Marksteiner's secondary LPTV station, the proposal should be rejected.⁵ In fact, Sherjan asserts that the adoption of WPPB's proposal would create, rather than solve, technical problems. Specifically, Sherjan states that its engineering studies indicate WPPB-DT operating on DTV *40 would significantly increase the area of prohibited overlap caused to WJAN-CA, while worsening the predicted interference to Miami low power stations WFUN-LP operating on channel 48 and WHDT-LP operating on channel 44.

4. In response, petitioner and Marksteiner assert that Sherjan's concerns about overlap to its WJAN-CA are unwarranted and should not be a factor in the outcome of this proceeding. Petitioner believes that Sherjan has raised no valid objections to the proposed channel change because it meets the relevant technical requirements, including interference protection rules and policies for Class A stations. Marksteiner claims the proposed channel substitution will not cause impermissible interference to any authorized television station. Marksteiner argues that the Longley-Rice terrain dependent propagation methods outlined in OET Bulletin 69 establish that WPPB operating on DTV Channel *40 would cause predicted interference to only 0.03% of station WJAN-CA's service area, well within the "service population" rounding tolerance of 0.5 percent. Moreover, Marksteiner states that the OET Bulletin 69 techniques establish that the proposed reallocation would not cause any predicted interference to station WFUN-LP or any other Class A or Class A-eligible station.

5. **Discussion.** We have reviewed all of the pleadings and engineering submissions before us and, for the reasons that follow, we find that the public interest will be served by adopting the

³ WHDT-LP was displaced by a DTV Channel 55 allotment for Station WPTV-DT, West Palm Beach. Marksteiner applied for and received a construction permit for channel 44 at Miami as a displacement channel for WHDT-LP. If the proposed channel substitution is approved, WHDT-LP will not be displaced by WPPB-DT. In addition, implementation of the settlement agreement will end petitioner's challenge to Marksteiner's implementation of his construction permit for a new full-power TV station authorized to operate on DTV Channel 59 at Stuart, Florida, that community's first local television service.

⁴ Public Law 106-113, as codified in Section 336(f) of the communications Act of 1934, as amended, 47 U.S.C. § 336(f).

⁵ Sherjan rejects the claim that adoption of its proposal is necessary in order to resolve a long standing dispute between the petitioner and Marksteiner, who was an applicant for, and is now the permittee of, a new DTV station on DTV Channel 59 at Stuart, Florida. It argues that its review of this proposal and the settlement agreement shows that there is not, and never has been a technical conflict between WPPB's Channel *44 DTV allotment and Marksteiner's Channel 59 application at Stuart. Sherjan contends that the true motive of the settlement agreement is to protect Channel 44 as a displacement channel for WHDT-LP by requiring petitioner to pursue Channel *40 for its DTV operation.

proposed channel substitution. Using the propagation methods outlined in OET Bulletin 69, and based on our review of the desired-to-undesired signal ratio, we calculate that the interference to be caused to WJAN-CA will be less than 2 percent of its population served, and therefore must be accepted by that Class A station.⁶ See Section 73.623(c)(2) of the Commission’s Rules. See also *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6386 (2000). Further, using those propagation methods, we calculate that no interference will be caused to WFUN-LP and WHDT-LP. Finally, this channel change proposal complies with city-grade service and interference protection requirements, and is otherwise consistent with the Commission’s technical standards. Sherjan has not demonstrated that this proposal cannot be granted.⁷

CONCLUSIONS AND ORDERING CLAUSES

6. Digital Channel *40 can be substituted and allotted to Boca Raton, Florida, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (25-59-34 N and 80-10-27 W). In addition, we find that this channel change is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for station WPPB operating with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
FL Boca Raton	*40	1000	310	3989

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 June 3, 2002, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Boca Raton, Florida	*40

8. IT IS FURTHER ORDERED, That the comments filed by Sherjan Broadcasting Company, Inc. IS DENIED.

⁶ Our independent engineering analysis, using Longley-Rice propagation models, indicates that WJAN-CA will receive interference to only 1.03% of its service population, well below the 2% benchmark.

⁷ Given its compliance with the Commission’s technical requirements, the fact that implementation of this proposal may have additional benefits for these parties, such as facilitating a settlement agreement between the petitioner and Marksteiner, is not a decisional factor in our decision to adopt the proposed channel substitution.

9. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, The School Board of Broward County, Florida shall submit to the Commission a minor change application for a construction permit (FCC Form 340) specifying DTV Channel *40 in lieu of DTV Channel *44 for station WPPB.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau