



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21-221; RM-11908; DA 23-990; FR ID 180832]

Television Broadcasting Services Las Vegas, Nevada.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 21, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking (NPRM)* in response to a petition for rulemaking filed by Scripps Broadcasting Holdings, LLC (Scripps or Licensee), the licensee of KTNV-TV, channel 7, Las Vegas, Nevada, requesting the substitution of channel 26 for channel 13 at Las Vegas, in the Table of TV Allotments. King Kong Broadcasting, Inc. (King Kong), the licensee of low power television station KGNG-LD on channel 26 at Las Vegas, filed opposition comments and counter-proposed that channel 26 instead be allotted as a new vacant channel at Las Vegas. For the reasons set forth in the *Report and Order* referenced below, the Bureau denies King Kong's opposition and counter-proposal, amends FCC regulations to substitute channel 26 for channel 13 at Las Vegas, and directs Scripps to file an application for a construction permit for channel 26.

DATES: Effective [THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 32011 on June 16, 2021. In its rulemaking petition, Scripps explained that digital VHF channels have propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and also result in nearby electrical devices causing signal interference, that it has

received many complaints from viewers unable to receive a reliable signal on channel 13, and that only five persons were predicted to lose service under the proposed channel substitution. In its Opposition, King Kong acknowledged that generally full-power television stations have priority over secondary LPTV stations in terms of channel allotments, but asserted that Scripps' proposal would not serve the public interest because it would displace KGNG-LD on channel 26. In support, King Kong stated that its principal resides in Las Vegas and as a result, King Kong has ascertained the needs of the community and curated programming options designed to serve the entire community, including programming which it characterizes as targeted towards the growing and underserved ethnic minority populations in the area. According to King Kong, if the Bureau were to grant Scripps' Petition, King Kong would be left with the option of filing for displacement to move to channel 13 once it is vacated by KTNV-TV or cease operations, and if it chose to seek displacement, it would be subject to competing applications and possibly still be forced to cease operations. Further, according to King Kong, even if it were ultimately granted a construction permit to operate the station on channel 13 or another VHF channel, KGNG-LD might be precluded from participating in the new ATSC 3.0 standard that would serve mobile users. Alternatively, King Kong noted that if the Commission grants its counterproposal and allots channel 26 to Las Vegas as a new allotment, in order to obtain a construction permit for UHF channel 26 King Kong would either have to be the sole applicant for the channel – an unlikely situation given Scripps' interest in the channel – or the winning bidder in a future Commission auction. Therefore, King Kong contended that the public interest would be better served if KGNG-LD remains on channel 26 and Scripps instead selects a different UHF channel for KTNV-TV. According to King Kong, there are at least eight other equivalent UHF channels available for KTNV-TV's use that are currently occupied by other LPTV stations and that while one of these LPTV stations would be displaced if Scripps sought to move to its channel, none of these stations provide the level of programming options offered by KGNG-LD or have principals with the same level of longstanding ties to the Las Vegas community as its principal possesses.

Finally, King Kong alleged that Scripps targeted KGNG-LD because it is a strong competitor in Las Vegas and as a way of striking back at King Kong because of disputes that have arisen over the years between King Kong and KTNV-TV employees. In reply, Scripps stated that as an LPTV station, KGNG-LD has secondary status and is therefore subject to interference from and displacement by full power stations, and any Commission action ordering Scripps to displace one of the other LPTV stations contravenes longstanding precedent against making licensing decisions based solely on programming offered on KGNG-LD. In addition, King Kong's argument that preserving its low power service on channel 26 would enable it to deliver ATSC 3.0 services in the future should be disregarded because the Bureau has ruled in other channel substitution rulemaking proceedings that the impact of a proposed channel substitution on delivery of ATSC 3.0 service is not a factor as that service is still in the early stages of development and the availability of consumer devices remains limited. Scripps also argued that the claim that Scripps' decision to displace KGNG is motivated by some sort of animus towards King Kong is vague, unsupported, and irrelevant, and appears to be based on disputes between King Kong and the prior owner of KTNV-TV. In fact, Scripps states that it sought to work with King Kong given the displacement and offered to donate Scripps' channel 13 equipment to King Kong upon moving KTNV-TV to channel 26 and maintain, at Scripps' expense, a temporary channel 13 facility for King Kong's use at KTNV-TV's downtown Las Vegas studio and tower facility. With respect to King Kong's counterproposal that channel 26 be allotted as a vacant channel at Las Vegas, Scripps observed that its proposal and King Kong's counterproposal are indistinguishable based on the Commission's allotment priorities since both propose Las Vegas, a community that is already well-served, and that accordingly, any determination must be made based on the Commission's exercise of its general discretion to serve the public interest, and the Commission has routinely granted petitions such as Scripps' even when displacing LPTV stations. Scripps also points out that King Kong is free to submit a rulemaking petition for a new channel allotment on any of the UHF channels it has identified as available in Las Vegas. In

reply, King Kong asserts Scripps provided no engineering explanation why it needs to move to channel 26, as opposed to another UHF channel, and reaffirmed its position that Scripps is targeting KGNG-LD as a means of removing a strong competitor and that the Commission must inquire into Scripps' motive before granting the Petition. It also reiterated that while LPTV stations are secondary, a harder look should be afforded to any proposal that would take service from viewers of low power stations such as KGNG-LD.

The Bureau denies King Kong's Opposition and Counterproposal and concludes that Scripps' proposal to substitute channel 26 for channel 13 at Las Vegas would serve the public interest and meets the Commission's technical and interference rules. It is axiomatic that LPTV stations, such as KGNG-LD, have secondary status and as such may not cause objectionable interference to existing full power stations, and must yield to or accept interference from existing full power stations that choose to modify where new interference will occur. Moreover, with respect to King Kong's request that the Bureau disregard KGNG-LD's secondary status and protect it from being displaced based on its specific programming, in general, section 326 of the Communications Act and the First Amendment of the U.S. Constitution prohibit the Commission from overseeing or regulating programming format. While King Kong's service to its community and the wide variety of programming it airs may be commendable, it is not justification to provide KGNG-LD greater protection than it is permitted under its secondary LPTV license or, as King Kong has requested, require Scripps to propose a different channel and instead displace other LPTV stations because those stations are either purportedly silent or the programming they are providing is, in King Kong's opinion, not as noteworthy as KGNG-LD's programming. Doing so would not only be contradictory with the Act, the First Amendment, and Commission precedent, but King Kong's argument with regards to its public service completely ignores efforts being undertaken by other stations in the market. The Bureau also finds King Kong's concerns related to its displacement and potential that viewers may entirely lose the station to be overstated and not grounds for denial of the Petition since upon release of

this *Report and Order*, King Kong will be eligible to file a displacement application for channel 13 or any other available channel. Commission records show that none of the other LPTV stations in Las Vegas are presently affected by pending or granted full power rulemaking petitions or full power modification applications, and because displacement applications are cut-off the day they are filed and major modifications for LPTV stations are frozen, it is highly unlikely that King Kong would face a competing application. In addition, while King Kong complains that Scripps did not provide any engineering data to refute the availability of the eight other UHF channels identified by King Kong, Scripps is not required to do so, and is free to choose any channel as a substitute channel that complies with our technical and community coverage requirements. With respect to KGNG-LD's future delivery of ATSC 3.0 services, the Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings and it does not justify altering KGNG-LD's status as a secondary service. The Bureau also finds King Kong's claim that Scripps chose to propose to move to channel 26, rather than another UHF channel, solely to vex King Kong and its principal to be conjecture and unfounded. Not only is it difficult to see how this unidentified conduct could be attributed to Scripps since it appears to have occurred before Scripps acquired the Station, it is at odds with Scripps' offer to assist King Kong in constructing a low power facility on channel 13, a fact that King Kong does not dispute. The Bureau makes clear, however, that its decision is in no way based on Scripps' offer to assist moving KGNG-LD to a displacement channel 13. The Bureau also denies King Kong's counterproposal. As Scripps points out, both parties propose Las Vegas so their proposals cannot be distinguished under the Commission's television allotment policies. In addition, Las Vegas already has seven allotted channels and under the Commission's allotment policies, which prioritize assigning two television channels to a community, is not entitled to an additional eighth channel at the expense of Scripps' channel substitution request, and as Scripps points out, the Bureau has acknowledged the public interest benefits associated with relocating a full power station from a VHF to a UHF channel. Moreover, if King Kong

wishes to operate a full power television station in Las Vegas, it may file a petition for rulemaking to drop-in one of the eight UHF channels that it has identified as being available for Scripps' use in Las Vegas. The Bureau also notes that ten individuals or entities filed letters in the Commission Licensing Management System in July, August, and September 2021, opposing the proposed channel substitution, but did not serve Scripps. Under the Commission's rules, any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered as part of the proceeding. Nevertheless, because these letters merely reiterate arguments raised by King Kong, they are addressed as part of the Bureau's findings related to King Kong's Opposition.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 21-221; RM-11908; DA 23-990, adopted October 18, 2023, and released October 18, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

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).

List of Subjects in 47 CFR Part 73

Television.

FEDERAL COMMUNICATIONS COMMISSION.

Thomas Horan
Chief of Staff
Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 - - RADIO BROADCAST SERVICE

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. In § 73.622(j), amend the table under Nevada by revising the entry for Las Vegas, to read as follows:

§ 73.622 Digital television table of allotments.

(j) ***

Community	Channel No.

NEVADA	

Las Vegas	2, 7, *11, 16, 22, 26, 29
