

petitioner notes that alternate FM channels are available for assignment to these communities should the need arise. Petitioner indicates that, in upgrading its present Class A station to a Class C station with 30 kilowatts at 61 meters (200 feet) it would provide a first FM service to 3,562 persons in a 1600 square kilometer (614 square miles) area, a first nighttime aural service to 2,815 persons in a 950 square kilometer (375 square miles) area, and a second nighttime aural broadcast service to 254 persons in a 340 square kilometer (132 square miles) area. No second FM service would be provided.

4. We believe the public interest would be served by the change in the O'Neill assignment from Channel 224A to Channel 275 in view of the substantial service that could be provided to underserved and unserved areas and population. The existing Channel 224A assignment is being deleted since there has been no expression of interest in its retention at O'Neill and the channel could be utilized elsewhere.

5. The Notice stated that if no other person expressed an interest in the proposed assignment of Channel 275 to O'Neill, the license of Station KBRX-FM could be modified to the Class C channel.³ Since no other party has expressed an interest in the proposed channel, the license of Station KBRX-FM can be modified.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, That effective November 16, 1979, the FM Table of Assignments (§ 73.202(b) of the rules) is amended with respect to the following community:

City	Channel No.
O'Neill, Nebraska.....	275

7. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Ranchland Broadcasting Co., Inc., for Station KBRX-FM, O'Neill Nebraska, is modified effective November 16, 1979, to specify operation on Channel 275 instead of Channel 224A. The licensee shall inform the Commission in writing no later than November 16, 1979, of its acceptance of this modification. Station KBRX-FM may continue to operate on

Channel 224A for one year from the effective date of this action or until it is ready to operate on Channel 275, or the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 275 the licensee of Station KBRX-FM shall submit to the Commission the technical information normally required of an applicant for Channel 275, including that connected with a change in the transmitter site;

(b) At least 10 days prior to commencing operation on Channel 275, the license of Station KBRX-FM shall submit the measurement data required of an applicant for a broadcast station license; and

(c) The licensee of Station KBRX-FM shall not commence operation on Channel 275 without prior Commission authority.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303.))
Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 79-31424 Filed 10-10-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[FCC 79-610]

Reregulation and Rules Oversight of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: By Reregulation Order, clarification is made and rewriting done on the rules pertaining to the sale of a station; four of the FCC's policies with appropriate citations are added to the FCC's listing of its policies in Part 73; and the FCC Form rule is corrected and conformed to recent changes in forms' titles and numbers.

EFFECTIVE DATE: October 22, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Philip Cross, John Reiser, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 27, 1979.

Released: October 5, 1979.

By the Commission: Commissioner Lee absent.

In the matter of reregulation and Rules Oversight of Radio and TV Broadcasting.

1. As a result of the continuing studies concerning the reregulation of broadcasting and the oversight of the AM, FM and TV rules, the Commission herein makes certain changes to update its regulations as described below:

(a) The following additions are made to the listing of policies of the FCC in Part 73, Subpart H.

(i) *Public Notice* entitled "Commission Orders Return to Substantial Compliance Standard in Evaluating Ascertainment Showings."

(ii) *Memorandum Opinion and Order* regarding expense reimbursement provisions in licensee-citizen group agreements.

(iii) *Report of the Commission* on uniform policy as to violation of laws of U.S. by station applicants.

(iv) *Letter* regarding use of station to serve licensee's private interests.

(b) In § 73.3500 are found the application and report forms of the FCC pertaining to the broadcast services. Recent changes bring about the following modification in this rule:

(i) Form Number 701 has its title changed to "Application for Extension of Construction Permit or to Replace Expired Construction Permit."

(ii) Form Number 321, "Application for Construction Permit to Replace Expired Permit" is deleted from the list of form numbers and titles. (Form 701 will be used in such applications in the future.)

(c) Sections 73.139 (AM), 73.241 (FM) and 73.659 (TV) are each titled "Special rules relating to contracts providing for reservation of time upon sale of a station." They contain the same text. It will be retitled "Transferring a station." The old title is somewhat inappropriate since it refers only to reservation of time whereas the text refers also to rights of reversion and reassignment of license. The combined rule will be placed in Subpart H as § 73.1150. the old § 73.241 (FM) does not specifically refer to noncommercial educational FM stations, but the provisions are applicable thereto, and such stations are covered by the new § 73.1150.

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public.

3. We conclude that, for the reasons set forth above, adoption of these revisions will serve the public interest, and inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would

Footnotes continued from last page (1,173), Miller (2,148), Ft. Pierre (1,448), Martin (1,248), Platte (1,351), Wagner (1,665).

³ Cheyenne, Wyoming, 62 F.C.C. 2d 63 (1976).

serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Therefore, it is ordered, that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the Commission's rules and regulations are amended as set forth in the attached Appendix below, effective October 22, 1979.

5. For further information on this Order, contact Steve Crane, Phil Cross or John Reiser, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

1. Section 73.139 is amended to read as follows:

§ 73.139 Special rules relating to contracts providing for reservation of time upon sale of a station.

See § 73.1150.

2. Section 73.241 is amended to read as follows:

§ 73.241 Special rules relating to contracts providing for reservation of time upon sale of a station.

See § 73.1150.

3. Section 73.659 is amended to read as follows:

§ 73.659 Special rules relating to contracts providing for reservation of time upon sale of a station.

See § 73.1150.

§ 73.3500 [Amended]

4. Section 73.3500 is amended to delete FCC Form Number 321 and its Title, "Application for Construction Permit to Replace Expired Permit;" and to change the title of FCC Form Number 701 to "Application for Extension of Construction Permit or to Replace Expired Permit."

5. New § 73.1150 is added to Subpart H, Part 73, to read as follows:

§ 73.1150 Transferring a station.

(a) In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.

(b) No license, renewal of license, assignment of license or transfer of

control of a corporate licensee will be granted or authorized if there is a contract, arrangement or understanding, express or implied, pursuant to which, as consideration or partial consideration for the assignment or transfer, such rights, as stated in paragraph (a) of this section, are retained.

6. New § 73.4021 is added to Subpart H, Part 73, to read as follows:

§ 73.4021 Ascertainment evaluations by FCC.

See Public Notice, FCC 79-332, dated June 8, 1979. 72 F.C.C. 2d —; 44 F.R. 33153, June 18, 1979.

7. Section 73.4060 is amended to add new paragraph (b) and designate current text as paragraph (a), to read as follows:

§ 73.4060 Citizens Agreements.

(a) See Report and Order, Docket 20495, FCC 75-1359, adopted December 10, 1975. 57 F.C.C. 2d 42; 40 F.R. 49730, December 30, 1975.

(b) See Memorandum Opinion and Order, FCC 78-875, adopted December 21, 1978. 70 F.C.C. 2d 1672.

8. Section 73.4225 is amended to add new paragraph (b) and designate the current text as paragraph (a), to read as follows:

§ 73.4225 Promotion of non-broadcast business of station.

(a) See letter to Station WADE, dated September 19, 1973, FCC 73-989. 42 F.C.C. 2d 1027.

(b) See letter to Station WJIM-TV, dated July 24, 1968, FCC 68-773. 14 F.C.C. 2d 239.

9. New § 73.4280 is added to Subpart H, Part 73, as follows:

§ 73.4280 Violation of laws of USA by station applicants; Commission Policy.

See Report of the Commission, Docket 9572, FCC 51-317, adopted March 28, 1951. 42 F.C.C. 2d 399; 16 F.R. 3187, April 11, 1951.

[FR Doc. 79-31426 Filed 10-10-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 78-52; RM-2808; FCC 79-612]

Television Broadcast Stations in Washington, D.C., Waldorf, Md., Fairfax and Front Royal, Va.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns UHF television Channel *56 to Fairfax, Virginia, reserved for noncommercial

educational use, and rejects an alternative plan to reassign UHF television Channel 14 from Washington, D.C. to Fairfax for noncommercial educational use. The retention of Channel 14 in Washington provides for a commercial channel for which there are several interested parties seeking to operate a station. Site limitations have been placed on affected channels to permit the use of a Bethesda, Maryland, transmitter site for the Channel *56 Fairfax assignment.

EFFECTIVE DATE: November 14, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order—(Proceeding Terminated)

Adopted: September 27, 1979.

Released: October 5, 1979.

By the Commission: Commissioner Lee voting by circulation.

In the matter of amendment of § 73.606(b), *Table of Assignments, Television Broadcast Stations*. (Washington, D.C., Waldorf, Maryland, Fairfax and Front Royal, Virginia.) BC Docket No. 78-52, RM-2808

1. The Commission has under consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 43 FR 7330, released February 21, 1978, concerning a petition filed by Central Virginia Educational Television Corporation ("CVETC"), licensee of noncommercial educational TV Station WNVT (UHF TV Channel 53).¹ CVETC seeks to remove the present assignment of UHF TV Channel 14 from Washington, D.C., and instead assign it to Fairfax, Virginia, where it would be reserved for noncommercial educational use. Comments in support were filed by CVETC, and Virginia Public Telecommunications Council ("VPTC").² Formal comments in opposition were submitted by Formula Telecommunications; Mayor Marion Barry of Washington, D.C.; Urban Broadcasting Co.; Greater Washington Educational Telecommunications Association ("GWETA"), (licensee of

¹ Channel 53 is assigned to Fredericksburg, Virginia, and is used at Goldvein, Virginia, pursuant to the Commission's "15-mile" rule, § 73.607(b).

² Letters in support of the proposal have been received from Governor Dalton of Virginia; Joseph A. Wirtela, Media Coordinator of the Fredericksburg Public Schools; Anne D. Dowling of Vienna, Virginia; and Brian R. Hinman of Arlington, Virginia. Also, the Fairfax County Democratic Committee submitted a resolution in support of CVETC's request.

noncommercial educational Stations WETA-TV and WETA-FM, Washington, D.C.); and by Washington Christian Television Outreach, Inc. ("WCTO"), applicant for Channel 14 at Washington, D.C. Additional comments were received from Teltronic Industrial Systems, Inc., Shenandoah Valley Educational Television Corporation, licensee of noncommercial educational TV Station WVPT, Staunton, Virginia, and TV translator Station W42AC, Front Royal, Virginia; and the Association of Maximum Service Telecasters, Inc. Reply comments were submitted by CVETC, WCTO; and VPTC. Additional pleadings were filed by WCTO and CVETC. (See paragraph 3, *infra*.)

2. CVETC urges the Commission to delete Channel 14 from Washington, D.C., and to reassign it to Fairfax, Virginia, with a noncommercial, educational reservation. Its purpose in requesting this change is to provide an improved noncommercial educational service to parts of northern Virginia that are now unable to receive the signal of its Channel *53 station. CVETC operates a translator station on Channel 14 in Arlington, Virginia for this purpose. However, in view of the pending application (and other expressions of interest) in the commercial use of Channel 14 in Washington, D.C. CVETC recognizes that its translator station can only be a temporary measure. In response to CVETC's request, the Commission's *Notice* proposed three alternative plans. Each was designed to provide improved noncommercial educational service to northern Virginia by permitting the use of a transmitter site closer to the desired coverage area. The key element of Plan I was the assignment of Channel *56 to Fairfax;³ Plan II would reassign Channel *14 from Washington, D.C. to Fairfax and reserve it for noncommercial educational use; and Plan III would assign Channel *56 at Goldvein. Because no change in city of license would be involved, this approach would permit CVETC's license to be modified to specify the newly assigned channel.⁴

3. Before examining the merits of the proposals, we need to resolve an important procedural matter which has been brought to our attention by WCTO. The issue is the consideration of a

³This plan would require the substitution of Channel *58 for Channel *56, an unoccupied Waldorf, Maryland, assignment, and the substitution of Channel *61 for the Channel *42 assignment at Front Royal, Virginia, on which a translator station is operating.

⁴This plan would require the same substitution of channels as in Plan I for Waldorf and Front Royal. In addition, Channel 53, CVETC's present channel, would be deleted from Fredericksburg, Virginia.

proposal first raised in reply comments. According to the *Notice*, the deadline for filing a counterproposal is the date for filing comments, not reply comments. See § 1.420(d) of the Commission's rules. CVETC describes its proposal⁵ to substitute Channel 56 for Channel 14 at Washington, as a modification of Plan II rather than a counterproposal. CVETC argues that it has not proposed a change that is mutually exclusive with Plan II. It submits that the Commission recently made a modification of this nature without finding it necessary to issue a Further Notice of Proposed Rule Making, citing *Medford, Oregon*, 42 Fed. Reg. 9401, released January 4, 1978, affirmed on reconsideration, BC Mimeo 13579, released March 21, 1979 (review pending). In that case the Commission assigned VHF television Channel 12 rather than UHF television Channel 18 which it had previously proposed to do. WCTO opposes our consideration of CVETC's substitution proposal, arguing that the substitution of Channel 56 for Channel 14 at Washington, D.C., constitutes a counterproposal concerning which it has not had the opportunity to respond.⁶

4. We believe that consideration of the plan advanced by CVETC in its reply comments would be unfair. The opportunity to comment on proposed changes at listed communities is central to the rule making process. When counterproposals are advanced in comments, the other parties have an opportunity to respond in their reply comments. That is not the case when the counterproposal first appears in reply comments. While it is true that the Commission has on occasion substituted one channel for another at a community even though that fact was not set forth, the situation there is a quite different one. In most cases, this has no bearing on the adequacy of the description of the proposals under consideration. See § 553(b)(3) of the Administrative Procedure Act. Thus, in the cited case of *Medford, Oregon, supra*, the Commission held that the terms and substance of the proposal—the assignment of an additional commercial channel to Medford—were adequately described. The city, Medford, where channel numbers were changed, had been previously listed and the public was told that changes were under

⁵This proposal would require an exchange of channels at Hazelton and Scranton, Pennsylvania, to eliminate a short spacing that would otherwise result. As in Plans I and III, a substitution of channels would also be necessary at Waldorf, but the Front Royal translator operation would be unaffected.

⁶Subsequently, it filed its response on the merits of the Channel 56 proposal for Washington, D.C.

consideration for the commercial channels. Here, not only has the Commission not announced it was considering a substitution of commercial channels at Washington, but it made no mention that channels at communities not previously listed, Hazelton and Scranton, Pennsylvania, would be affected. Furthermore, contrary to CVETC's characterization of its proposal as a modification of Plan II, the proposal is mutually exclusive to Plan I and is therefore ineligible for consideration at this stage by the Commission Rule 1.420(d). Even if the Administrative Procedure Act does not preclude consideration of CVETC's proposal to assign Channel 56 to Washington, doing so at this stage would be disruptive and unfair.

5. Concerning the proposals before us, CVETC has expressed an interest only in Plan II. It states that it favors Plan II principally because it believes that only through its proposed use of Channel 14 can it achieve an adequate signal level over northern Virginia. First, it contends that Channel *56, if assigned to Fairfax, would not provide a satisfactory area for locating its transmitter since most homes have antennas oriented toward northwest Washington, and away from the area where it would need to locate.⁷ Second, CVETC contends that existing towers could not be utilized because of the additional weight needed for a Channel *56 antenna, nor, it indicated, could it construct a tower to the necessary height.⁸ CVETC has submitted engineering data in an effort to demonstrate that a Channel *56 operation would suffer a 5.4 dB impairment in signal as compared to a Channel *14 facility, assuming the same effective radiated power and antenna height. It asserts that it would not be cost-effective to invest in the additional equipment needed to make up for this by increasing power on the higher UHF channel. Therefore, it believes that the substantial costs involved in relocating its transmitter site including the purchase of a transmitter, transmission line and antenna suitable for Channel *56 far outweighs the expected benefits

⁷CVETC contends that the Commission relied on the importance of antenna orientation when it granted a 26-mile short-spacing to permit a Wilmington, Delaware, station to locate its transmitter in Philadelphia, Pennsylvania. Letter to WHY, Inc., dated September 24, 1969.

⁸This information is derived from a study by Aviation Systems Associates attached to this pleading which concludes that an antenna tower of at least 1,000 feet above mean sea level (MSL) southwest of the Potomac River in northern Virginia, would probably not be approved by the FAA. A second analysis indicates that such a land use would not be approved by local government authorities.

making it unlikely that it would ever seek to do so. CVETC also objects to Channel *56 because the Front Royal translator operation on Channel *42 would be required to change Channel *61. Its engineer estimates that a 2.3 dB impairment in signal over its present service area would result from the move to a higher UHF frequency.⁹ As in its own case, it asserts that only an increase in antenna gain, height or both at considerable expense would provide comparable service. A site restriction on the new Front Royal assignment or on the affected channels at Frederick, Maryland, and Wilmington, Delaware, would also be necessary, we are told.

6. CVETC also objects to Plan III which offered the assignment of Channel *56 to Goldvein, Virginia, where WNVN is presently licensed and a modification of its license to the new channel. CVETC states that the Goldvein proposal would provide even less desirable coverage to northern Virginia than Plan I especially to the Arlington, and Alexandria area where the receiving antennas are oriented to the northwest. In addition, CVETC believes that the Fredericksburg, Virginia, Channel *53 assignment scheduled to be deleted under this plan should be retained for future use. CVETC notes that Plan III would also involve disruption to the Front Royal translator with attendant site limitations on that station or on the affected Frederick, Maryland, and Wilmington, Delaware, assignments.

7. CVETC argues that Plan II would best serve its purposes since it would permit use of a transmitter site to the northwest of Washington, where other local television towers are situated. Unlike the proposals for Channel *56 at either Fairfax or Goldvein, the Channel *14 assignment would allow for an increase in antenna height to 1,049 feet above MSL with FAA clearance, according to CVETC's aeronautical consultant. This plan would not involve disruption to the Front Royal translator station nor place site restrictions on any assignments. It would also leave the Fredericksburg assignment unaffected.

8. The Virginia Public Telecommunications Council ("VPTC") urges adoption of CVETC's proposal so that Station WNVN can adequately reach all of the potential local audience. VPTC details at great length the attempts and plans of Station WNVN to provide instructional programming to elementary and secondary school age children, which are described as ineffective with the present operation since not all of northern Virginia's

schools are reached. VPTC argues that northern Virginia is grossly underserved having only one local station for over a million people while Washington has nine television stations for a population of just over 700,000. VPTC contends that the service provided by Washington stations cannot be a substitute for local service especially of the type provided and planned by WNVN. As for Washington's needs, VPTC contends that it is irrelevant at the assignment stage that minority groups may apply for the remaining Channel 14 allocation. Existing Washington stations and the proposed use of Channel *32 by Howard University can respond to these needs, according to VPTC. Therefore, VPTC urges us to conclude that the need of northern Virginia for noncommercial service outweighs those of Washington for additional commercial service.¹⁰

9. Plan II is opposed by several parties. Among them, GWETA warns that removal of Channel 14 from Washington will deprive the city of its last opportunity for commercial programming directed to minorities. It states that it does not oppose implementation by CVETC of the statewide plan of VPTC. It agrees about the need for and value of extended service, but it questions whether Plan II is the best way to proceed. Instead, it believes that such coverage can be advanced by the adoption of Plans I or III. In its earlier comments, GWETA had urged the Commission to consider the impact that a third noncommercial, service¹¹ in the immediate Washington area would have on Station WETA-TV's ability to draw upon and serve the metropolitan area. In this regard, GWETA believes that there is a limited source for donations and that programming duplication, particularly in "prime time," is already to great.

10. The comments of WCTO, Formula,¹² Mayor Barry and Urban Broadcasting Co., urge the retention of Channel 14 in Washington, to provide a

¹⁰ VPTC suggests that if the reassignment of Channel *14 to Fairfax is denied, then Channel *56 should be assigned to Fairfax, with provisions made for the use of a site in Bethesda. A short-spacing to the affected Hazelton assignment could be avoided by a site restriction there.

¹¹ The noncommercial educational stations serving this area include WETA-TV (Channel 26) and WAPB-TV (Channel 22), Annapolis, Maryland. A fourth noncommercial educational service is planned for the near future, WHMM-TV (Channel 32) (permit issued to Howard University).

¹² Formula requested an extension of time to file additional comments supporting retention of the Channel 14 assignment at Washington. The request was opposed by CVETC. In view of the action taken here, its request for extension to submit additional comments on the need to retain Channel 14 in Washington is rendered moot. Therefore we have denied the request.

needed minority-oriented service to the residents of Washington. They cite and support local attempts to obtain minority ownership in a Channel 14 station. They also believe that existing noncommercial educational service in the Washington area is adequate and that an additional station dependent on the community's contributors would put too great a drain on the already limited donative capacity of the residents.

11. Teltronics Industrial Systems, Inc., expressed concern about the destructive interference that the activation of a television Channel 14 transmitter would have on the receivers in the mobile radio system operating on frequencies just below the Channel 14 frequencies. No indication is given as to how these receivers would be affected by the requested reassignment of Channel *14 to Fairfax. Thus, it is unclear what bearing this has on the rule making action to be taken regarding the channel assignment.

12. SVETC, licensee of the Front Royal translator, complains that the assignment of Channel *56 in Plans I and III would require the station to change frequencies.¹³ It contends that the impact of this change would be to place financial burdens not only on it but on the school districts which have equipment tuned to a specific channel. In addition, it asserts that an increase in antenna gain costing approximately \$13,500 would be necessary to obtain equivalent service on the new channel. SVETV also notes that the more restrictive locations for a transmitter site for Channel *61 may discourage future attempts at a full local TV broadcast service.¹⁴

13. The comments of AMST expressed concern over the fact that several possible assignments involve short-spacings. AMST takes no position on the merits of any of the proposed assignment plans but urges our insistence upon compliance with the mileage separation requirements through use of site restrictions if the channels are assigned.

14. The reply comments of CVETC focus primarily on its counterproposal to assign Channel 56 to Washington, which we have previously decided was unacceptable for consideration at this stage (see paragraphs 3 and 4, *supra*).

¹³ On September 25, 1979, SVETC filed additional comments and a motion for leave to their acceptance. These comments are directed to a possible change in the channel of its translator, but no such change is involved in the action taken here. Therefore no purpose would be served by acceptance of these comments.

¹⁴ A list of eight existing translator stations that could be adversely affected by the operation of a full broadcast station on Channel *61 in Front Royal was provided by SVETC.

⁹ See paragraph 12, *infra*.

15. VPTC's reply elaborates on its previous comments concerning the comparative factors which it believes favors the allocation of Channel *14 in northern Virginia. Further, VPTC reemphasizes its view that the Commission may not consider racial factors in allocation decisions. It points to Commission attempts to increase minority ownership which, it says, does not include tampering with the allocation standards. It predicts that if the Commission were to favor the Washington assignment on this basis, then the decision could not withstand scrutiny, citing the recent Supreme Court decision in *Bakke v. Regents of the University of California*, and other cases.

16. In its reply, WCTO notes that the only difference in site flexibility between the Channel 14 and 56 assignments to northern Virginia is that Channel 56 unlike Channel 14 cannot use a site in Washington, D.C. In its opinion, if CVETC were truly interested in northern Virginia, then the site limitation would not be of concern to them. WCTO also points out that it has been Commission policy to treat the various UHF channels as equivalent. It is WCTO's position that the Commission's policy to increase minority ownership should not be frustrated by CVETC's preference in channel numbers.

17. The expressed purpose of CVETC's request in this proceeding is to gain a more desirable location than it now has on Channel *53 for a northern Virginia noncommercial educational station. The means chosen by CVETC to accomplish that purpose was for the Commission to reassign and reserve Channel *14 to Fairfax. The Commission, while agreeing to pursue this suggestion by soliciting comments, also mentioned two other ways of providing better noncommercial educational service to northern Virginia. These, unlike CVETC's proposal, would not do so by depriving Washington of its last available commercial television assignment. Our primary goal needs to be to provide the desired service to both Washington and northern Virginia, rather than deprive one of needed service for a higher level of service at the other. With some modifications to Plan I, the assignment of Channel *56 to Fairfax, and retaining Channel 14 in Washington, would appear best suited for this task. We shall first address CVETC's objections to this channel assignment.

18. CVETC expressed concern about obtaining a desirable transmitter location when faced with antenna

orientation toward northwest Washington, or with the lack of a tower site, in specified areas, either existing or to be constructed that could accept its proposed facility. However, CVETC made known to us for the first time in its comments that it is interested in locating on the existing auxiliary transmitter site for Station WJMD(FM), Bethesda, Maryland. CVETC noted that only a Channel 14 station could locate at this site and meet applicable spacing requirements. However, were Channel *56 to be used at the Bethesda site, only a 5.7 mile short spacing to an unoccupied Channel 56 assignment at Hazelton, Pennsylvania, would result. At the comment stage, CVETC indicated it could find no replacement channel at Hazelton. However, it is possible to call for an appropriate site restriction for the Hazelton channel to permit CVETC's proposed use of a site in northwest Washington for Channel *56.¹⁵

Although CVETC has stated that it does not expect to apply for Channel *56, if assigned at Fairfax, that statement was made without the benefit of knowing it could be accommodated at a Bethesda site.¹⁶

19. Other objections mentioned by CVETC to the Channel *56 assignment at Fairfax, can also be met. The Front Royal translator operating on Channel 42 would not be short-spaced to the Bethesda site. Thus, it would not be necessary to specify a channel modification there. Moreover, we would not expect that an applicant for a full broadcast station on Channel 42 at Front Royal would face difficulty in meeting the spacings to a Bethesda reference point for Channel *56.¹⁷ The Fredericksburg channel (which CVETC uses now at Goldvein) would also remain unaffected if we assume a Bethesda site for Channel 56.¹⁸

20. Since a viable alternative to the deletion of Channel 14 from Washington exists, it is not necessary to compare the

¹⁵ It would also appear that the WJMD(FM) auxiliary tower could be increased to a desired height in light of previous FAA clearances of other towers of this height only a mile away.

¹⁶ In addition to the restriction placed on transmitter sites at Hazelton, it would be necessary to use northwest Washington as the reference point for the Channel *56 Fairfax assignment so as to avoid the filing of future Hazelton applications that would otherwise meet the spacing requirements to the Fairfax reference point.

¹⁷ A 2.7 kilometer (1.7 mile) site restriction to the west of Front Royal would be necessary. SVETC's present translator site would be unaffected by the use of Channel *56 in Bethesda at the site specified by CVETC.

¹⁸ On the other hand, should another applicant for Channel *56 obtain the license, there would, in our opinion, remain sufficient flexibility to meet the spacings to WNVV's present site on Channel 53 at Independent Hill.

needs of Washington and Fairfax for the same channel. CVETC has not demonstrated, in our opinion, sufficient public interest reasons to justify the removal of Channel 14 from Washington where there are several expressions of interest. CVETC has certainly shown a need for improved service to northern Virginia. Nonetheless, the Commission believes that this need can be adequately met by the allocation of Channel *56 to Fairfax. The record shows that CVETC will be able to provide a quality signal to northern Virginia through the use of a Channel *56 assignment to Fairfax. However, if CVETC still feels aggrieved by this decision, it still has the opportunity to apply for Channel 14 specifying a community in northern Virginia other than Fairfax, under the 15-mile rule. See § 73.607(b) of the Commission's rules.

21. Accordingly, it is ordered, That effective November 14, 1979, the Television Table of Assignments, § 73.606(b) of the Commission's rules, is amended with regard to the cities listed below as follows:

City	Channel No.
Waldorf, Maryland.....	*58+
Fairfax, Virginia.....	*56-

22. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended.

23. It is further ordered, That the Motion to File Additional Comments by SVETC is denied.

24. It is further ordered, That the request of Formula Telecommunications for an extension of time to file additional comments is denied.

25. It is further ordered, That this proceeding is terminated.

26. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-31427 Filed 10-10-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket 79-131; RM 3286]

Table Assignment § 73.202 FM to Fordyce, Ark.

AGENCY: Federal Communications Commission.