

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

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In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-124
Table of Allotments,)	RM-9893
Digital Television Broadcast Stations.)	
(Bryan, Texas))	
)	
)	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 2001

Released: December 5, 2001

Comment Date: January 28, 2002

Reply Comment Date: February 12, 2002

By the Chief, Video Services Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 15 FCC Rcd 12653, (2000), requesting comments on the petition for rule making filed by KWTX/KBTX License Corporation ("KWTX"), licensee of station KBTX, NTSC channel 3, Bryan, Texas. KWTX sought the substitution of DTV channel 33 for station KBTX-TV's assigned DTV channel 59. KWTX filed comments supporting its proposal to substitute channels at Bryan. Comments were also filed by Centex Television Limited Partnership ("Centex") and Paxson Houston License, Inc. ("Paxson"). KWTX filed a Motion for Extension of Time to submit Reply Comments and subsequently filed reply comments. After the record closed, KWTX filed a Request to Open Proceeding for Further Comments.¹

2. In response to KWTX's channel substitution proposal, Centex, licensee of low powered television station KRHD-LP, Bryan, Texas, channel 34, filed comments advising that its station was granted Class A television status. Centex states that KWTX's proposal would cause interference to Centex's LPTV station and to the digital facilities of KVUE-TV, Austin, Texas. Centex argues that KWTX would served more people with an out-of-core facility than with the proposed core facility. Paxson, licensee of KPXB(TV), Conroe, Texas, also filed comments in opposition noting that its Houston translator, K33DB, would be displaced by KWTX's proposal.

3. KWTX filed rebuttal comments noting that Paxson's Houston translator, K33DB, is a secondary service subject to displacement. KWTX also noted that Centex's claim of interference is not accurate. KWTX points out that if "masking" of interference from other stations is considered,

¹ We will accept KWTX's further comments since they provide an alternate allotment proposal that could facilitate the resolution of this proceeding.

then there is no additional interference to KRHD-LP from the adoption of KWTX's proposal. KWTX states that Centex's suggestion that KWTX operate its out-of-core facility to serve more people circumvents the Commission's directive requiring DTV stations to operate on a "core" channel following the transition. Finally, KWTX concedes that its proposal exceeds the 2% interference limitation in light of the fact that the proposal will cause 2.9% of the population proposed to be served by KVUE(TV). However, KWTX states that it will hold discussions with the licensee of KVUE(TV) to seek a resolution to the minor amount of excessive interference.

3. Subsequently, KWTX filed a request to open this proceeding for further comments. KWTX submits that as a result of the Commission's action in *Report and Order*, MM Docket No. 01-46, released May 25, 2001, the DTV Table of Allotments for Temple, Texas, was modified to substitute channel 9 for channel 50, thus leaving channel 50 available for allocation. KWTX contends that the substitution of channel 50 for channel 59 at Bryan will eliminate all of the problems which were presented by the proposed allotment of channel 33.² Thus, it contends that the interference between KWTX and the KVUE-DT maximization application would be eliminated. It also contends that the allotment of DTV channel 50 would permit KWTX to construct one digital facility and its present site.

4. We believe KWTX's new proposal warrants consideration. We are issuing this *Further Notice* to seek comments on KWTX's new channel substitution proposal. However, this *Further Notice* does not afford an additional opportunity to file counterproposals in response to KWTX's initial proposal to substitute DTV channel 33 for DTV channel 59 but only to KWTX's new proposal to substitute DTV channel 50 for DTV channel 59 at Bryan, Texas.

5. DTV Channel 50 can be substituted for DTV Channel 59 at Bryan, Texas, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (30-33-16 N. and 96-01-51 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). We propose to substitute DTV Channel 50 for DTV Channel 59 for station KBTX-DT at Bryan with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
TX Bryan	50	1000	477

6. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read

² KWTX submits that at the time it filed its petition for rule making, its proposal did not cause interference to the then authorized DTV facility of KVUE(TV). The interference noted by Centex became a consideration in this proceeding, after the proceeding was initiated, because of the maximization application filed by KVUE-TV.

as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Bryan, Texas	29c, 59	29c, 50

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before January 28, 2002, and reply comments on or before February 12, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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 (Counsel for KWTX/KBTX License Corporation)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be

considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found 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 PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments,

pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.