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June 25, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Television Station WTWB-TV, Channel 19,
Johnstown, Pennsylvania
Supplement To Petition For Rulemaking
Amendment of Table of Television Allotments
(Johnstown and Jeannette, Pennsylvania)
(RM No. 8756, MM Docket No. ____)

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Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Venture Technologies Group, Inc., licensee of Television Station WTWB-TV, Channel 19, Johnstown, Pennsylvania are an original and four copies of its Supplement To Petition For Reconsideration with respect to the April 25, 1996, ruling by the Chief of the Allocations Branch of the Mass Media Bureau's Policy and Rules Division dismissing as unacceptable VTG's January 31, 1996 Petition For Rulemaking which seeks modification of the Commission's Table of TV Channel Allotments to (a) delete UHF Channel 19 from Johnstown, Pennsylvania; (b) add UHF Channel 19 to Jeannette, Pennsylvania; and (c) modify the license of WTWB-TV to specify operations on Channel 19 in Jeannette, Pennsylvania in lieu of operation on Channel 19 in Johnstown, Pennsylvania.

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KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

Mr. William F. Caton
May 28, 1996
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Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER, LLP

By: Irving Gasfreund *IG*
Irving Gasfreund

Enclosures

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

JUN 2 1996

In the Matter of)
)
Amendment of Section 73.606(b)) RM No. 8756
of the Commission's Rules) MM Docket No. _____
Table of Allotments)
For Television Broadcast Stations)
(Johnstown and Jeannette, Pennsylvania))

To: Chief, Mass Media Bureau

SUPPLEMENT TO PETITION FOR RECONSIDERATION

VENTURE TECHNOLOGIES GROUP, INC. ("VTG"), licensee of Television Station WTWB-TV, Channel 19, Johnstown, Pennsylvania, by its attorneys, pursuant to Section 1.106 of the Commission's Rules, hereby supplements its May 28, 1996 Petition For Reconsideration in the above-captioned proceeding. That Petition For Reconsideration seeks reconsideration of the April 25, 1996 letter ruling of the Chief of the Allocations Branch of the Policy and Rules Division of the Mass Media Bureau (hereinafter "Staff Ruling") dismissing as unacceptable VTG's January 31, 1996 Petition For Rulemaking, which sought modification of the Commission's Table of Television Channel Allotments to (a) delete UHF Channel 19 from Johnstown, Pennsylvania, (b) add UHF Channel 19 to Jeannette, Pennsylvania, and (c) modify the license of WTWB-TV to specify operations on Channel 19 in Jeannette, Pennsylvania, in lieu of operation on Channel 19 in Johnstown, Pennsylvania. In support whereof, it is shown as follows:

In its Staff Ruling herein, the Allocations Branch dismissed VTG's Petition For Rulemaking as unacceptable for filing. In this regard, the Staff Ruling held that VTG's Petition violates the Commission's Advanced Television ("ATV") Freeze Order.¹ However, in its Petition For Reconsideration, VTG demonstrated clearly that acceptance and grant of its Petition For Rulemaking and the reallocation of Channel 19 from Johnstown to Jeannette, Pennsylvania, will not violate the Commission's ATV Freeze Order or otherwise adversely affect ATV channel allotments. Indeed, VTG demonstrated in its Petition For Reconsideration that it would be fully consistent with the Freeze Order and would not in any way hamper the Commission's flexibility in making ATV channel assignments. Furthermore, VTG demonstrated, in its Petition For Reconsideration, that the Staff Ruling improperly relied on the staff decision in Appleton, New London and Suring, Wisconsin, 10 FCC Rcd 7712 (Allocations Branch, Policy and Rules Division, Mass Media Bureau, 1995), since the facts in that case were distinguishable from those presented herein. As shown by VTG, in Appleton, the licensee proposed a transmitter site relocation significantly closer to the Milwaukee reference point and freeze area, whereas VTG proposes no transmitter site relocation or modification of technical facilities. In addition, the licensee in Appleton proposed the creation of a grey area, whereas no loss area would be created by VTG's proposal.

¹ Advanced Television Systems and Their Impact On The Existing Television Broadcasting Service, __ FCC Rcd __, Mimeo No. 4074 (released July 17, 1987, 52 Fed. Reg. 28346 (July 29, 1987)).

It is the purpose of the instant Supplement to respectfully bring to the attention of the Mass Media Bureau certain recent precedent released by the Allocations Branch of the Mass Media Bureau's Policy and Rules Division which supports VTG's Petition For Reconsideration in this case. More specifically, on June 21, 1996, the Allocations Branch of the Policy and Rules Division of the Mass Media Bureau released its Notice of Proposed Rule Making in Kansas City, Missouri, __ FCC Rcd __, DA 96-945 (Allocations Branch, Policy and Rules Division, Mass Media Bureau, released June 21, 1996). For convenience, a copy of the text of that Notice of Proposed Rule Making is annexed hereto as Exhibit 1. In that ruling, the Allocations Branch granted a petition for rule making filed by the permittee of a new UHF television station on Channel 32 in Kansas City, Missouri. That permittee had requested a rulemaking proceeding contemplating modification of its construction permit for Television Station KCWB(TV) to specify operations on Channel 29 rather than Channel 32. To accommodate the allotment of Channel 29 to Kansas City, the permittee requested that the coordinates for vacant Channel *22 at St. Joseph, Missouri, be changed.

In proposing the channel allotment changes requested by the permittee, the Allocations Branch specifically held that the channel change proposed by the permittee of Channel 32 in Kansas City would not violate the Commission's ATV Freeze Order. In this regard, the Chief of the Allocations Branch held as follows:

“Although the Commission has imposed a freeze on television allotments in certain metropolitan areas, which include Kansas City, our consideration of the Kansas City substitution is not prevented by the freeze. [Footnote omitted.] The adoption of the proposal would not result in a new allotment but merely a change in the frequency of an existing allotment ”

Kansas City, Missouri, supra, slip op. at 2, ¶3.

It is impossible to discern how a proposed channel change and associated frequency change for a television station in a ATV freeze-zone would be consistent with the Commission's ATV Freeze Order, but that VTG's proposal merely to change community of license for WTWB-TV would be inconsistent with the ATV Freeze Order. Yet, that is what the Allocations Branch held in its Staff Ruling herein.

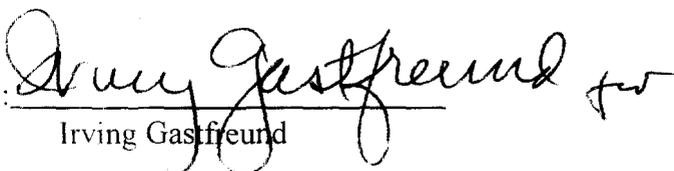
In short, the June 21, 1996 Notice of Proposed Rule Making in Kansas City, Missouri, supra, fully supports VTG's position in this proceeding and is consistent with the Staff Ruling in this case with respect to consistency with the Commission's ATV Freeze Order.

In light of all the foregoing and for the reasons set forth in VTG's Petition For Reconsideration herein, VTG respectfully submits that the Allocations Branch erred in its Staff Ruling in this case in dismissing VTG's Petition For Rulemaking as unacceptable. Accordingly, it is respectfully requested that the Mass Media Bureau expeditiously vacate the Staff Ruling in this case and promptly issue a Notice Of Proposed Rule Making proposing to reallocate Channel 19

from Johnstown, Pennsylvania, to Jeannette, Pennsylvania, and proposing to modify WTWB-TV's license accordingly.

Respectfully submitted,

VENTURE TECHNOLOGIES GROUP, INC.

By:  Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, NW
Washington, D.C. 20005
(202) 682-3526
Its Attorneys

June 25, 1996

Exhibit 1

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

DA 96-945

In the Matter of)
)
Amendment of Section 73.606(b),) MM Docket No. 96-134
Table of Allotments,) RM-8817
TV Broadcast Stations.)
(Kansas City, Missouri))

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1996

Released: June 21, 1996

Comment Date: August 12, 1996

Reply Comment Date: August 27, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by TV-32, Inc. ("TV-32") proposing the substitution of UHF Television Channel 29 for UHF television Channel 32 at Kansas City, Missouri. TV-32 also requests modification of its construction permit for Station KCWB to specify operation on Channel 29.¹ To accommodate the allotment of Channel 29 at Kansas City, TV-32 requests that the coordinates for vacant Channel *22 at St. Joseph, Missouri, be changed.

2. In support of the proposal, TV-32 states that Channel 29 can be allotted to Kansas City consistent with all pertinent Commission requirements provided there is a change in the reference coordinates for vacant Channel *22 at St. Joseph, Missouri. TV-32 states that it is requesting the substitution of channels because it cannot obtain a permit from the local zoning authorities to construct Station KCWB on Channel 32 as authorized by the Commission. TV-32 states that it entered into a lease for a tower site and had targeted September 1, 1996, as the start-up date. However, TV-32 submits that it encountered well organized opposition from neighboring property owners for a special use permit to construct a tower at its proposed site. Further, TV-32 is also constrained within the fully spaced area by Federal Aviation Administration air-hazard limitations. TV-32 explains it has explored the possibility of utilizing an existing tower but has discovered that there are no fully-spaced tall towers that will allow for operation of Station KCWB on

¹ We note that on April 30, 1996, TV-32, Inc., pursuant to Section 73.1635 of the Commission's Rules, filed a request for special temporary authorization ("STA") to operate Station KCWB on commercial Channel 29 in lieu of channel 32 at Kansas City, Missouri.

Channel 32. All existing towers that could accommodate Channel 32 are significantly short-spaced to Station KBIN-TV, Channel 32, Council Bluffs, Iowa, and to Channel 18, Carrollton, Missouri. TV-32 contends that its proposal is consistent with the Commission's current freeze on new television channel allotments in certain major markets. The substitution of Channel 29 for Channel 32 at Kansas City will not create a new allotment or reduce the amount of spectrum currently authorized for possible ATV use in Kansas City. TV-32 points out that adoption of its proposal will provide immediate initiation of a new TV service in Kansas City and complete city grade coverage will be provided to the community. In addition, TV-32 states that if Station KCWB is authorized to operate on Channel 29, no other governmental approvals are necessary, as the tower site is in an antenna farm that has been approved by the FAA and local government authorities. TV-32 commits that if authorized to operate on Channel 29, it will immediately begin construction of Station KCWB and commence operation as soon as possible.

3. A staff engineering analysis of the proposal has determined that UHF Television Channel 29 can be allotted to Kansas City in compliance with the Commission's minimum distance separation requirements.² To accommodate the allotment of Channel 29 at Kansas City, we shall also propose to change the reference site for vacant Channel *22 at St. Joseph, Missouri.³ Although the Commission has imposed a freeze on television allotments in certain metropolitan areas, which include Kansas City, our consideration of the Kansas City substitution is not prevented by the freeze.⁴ The adoption of the proposal would not result in a new allotment but merely a change in the frequency of an existing allotment. With respect to St. Joseph, the new site proposed for Channel *22 is further removed from Kansas City than the present Channel *22 allotment site.

4. We believe the public interest would be served by proposing the substitution of UHF Television Channel 29 for UHF Television Channel 32 at Kansas City, Missouri, as it will permit the initiation of a new television service in Kansas City. We tentatively conclude that TV-32 has shown that it is unable to operate a station on Channel 32 at Kansas City in compliance with the Commission's spacing requirements despite diligent efforts. Since Station KCWB has never been on the air, a change in channels will not cause disruption to existing service. Therefore, as requested, we shall propose to modify TV-32's construction permit for Station KCWB to specify operation on Channel 29 at Kansas City, Missouri. We will not accept competing expressions of interest in the use of Television Channel 29 at Kansas City. In addition, we will propose changing the reference site coordinates for vacant Channel *22 at St. Joseph, Missouri.

² The coordinates for Channel 29 at Kansas City are 39-05-01 and 94-30-57.

³ The coordinates for Channel *22 at St. Joseph are 39-54-40 and 94-50-18.

⁴ See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346, July 29, 1987.

5. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>	
	Present	Proposed
Kansas City, Missouri	4, 5-, 9+, *19+, 32-, 41-, 50-, 62+, *68-	4, 5+, 9+, *19+, 29-, 41-, 50-, 62+, *68-

6. 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.

7. Interested parties may file comments on or before August 12, 1996, and reply comments on or before August 27, 1996, 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's counsel, as follows:

Meredith S. Senter, Jr.
 Renee L. Roland
 Leventhal, Senter & Lerman
 2000 K Street, N.W., Suite 600
 Washington, D. C. 20006-1809

8. 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 FM Table of Allotments, Section 73.202(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.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: 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 FM Table of Allotments, Section 73.202(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 Procedures. 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 proposal(s) 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 Sections 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 239, at its headquarters, 1919 M Street, N.W., Washington, D. C.

CERTIFICATE OF SERVICE

I, Mary Odder, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, hereby certify that on this 25th day of June, 1996, have caused copies of the foregoing Supplement To Petition For Reconsideration to be sent via first-class U.S. mail, postage prepaid, or to be hand-delivered, to the following:

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