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Federal Communications Commission

DA 97-540

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

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MM Docket No. 97-96
Table of Allotments,)	RM-8756
TV Broadcast Stations.)	
(Johnstown and Jeannette, Pennsylvania))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 12, 1997;

Released: March 21, 1997

Comment Date: May 12, 1997
Reply Comment Date: May 27, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the Petition for Rule Making filed by Venture Technologies Group, Inc., ("petitioner"), licensee of Station WTWB-TV, UHF Television Channel 19+, Johnstown, Pennsylvania, proposing the reallocation of Channel 19+ from Johnstown to Jeannette, Pennsylvania.¹ Petitioner also proposes the modification of Station WTWB-TV's license to specify Jeannette as its new community of license. Petitioner states its intention to apply for the channel, if reallocated to Jeannette.

2. This Petition for Rule Making is filed pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states Station WTWB-TV, Channel 19+ at Johnstown has had a long history of failing to serve the public interest due to

¹On April 25, 1996, we returned this Petition for Rule Making on the grounds it violated the Commission's Freeze Order on the acceptance of certain petitions for rule making proposing to amend the TV Table of Allotments. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346, July 29, 1987. Petitioner filed a Petition for Reconsideration directed to our earlier action. In light of the Sixth Further Notice of Proposed Rule Making, in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996), we are of the view that the Freeze Order does not preclude acceptance of this petition for rule making. Accordingly, we will reinstate the Petition for Rule Making and dismiss the Petition for Reconsideration herein as moot.

the fact that the Johnstown-Altoona market is economically depressed and cannot support a fifth television broadcast station.

3. Moreover, petitioner states that Jeannette is the second largest incorporated city located in Westmoreland County, and has a population of 11,221² persons. There are no television stations licensed to Jeannette. The only radio station licensed to Jeannette is Station WBCW(AM), a daytime-only station. Excluding Station WTWB-TV, Johnstown, with a population of 28,134 persons, has two licensed commercial television stations and an unused educational allotment on Channel *28+. Additionally, there is a construction permit for a new low-power television station on Channel 35 at Johnstown. Lastly, petitioner states that Johnstown also has seven radio stations licensed to the community.

4. We believe the proposal warrants consideration since the reallocation of Channel 19+ from Johnstown to Jeannette, Pennsylvania, could, in furtherance of the television allotment priorities, provide the community with its first local television broadcast service.³ An engineering analysis has determined that Channel 19+ can be allotted to Jeannette in compliance with the Commission's minimum distance separation requirements with a site restriction of 43.8 kilometers (27.2 miles) east at petitioner's requested site.⁴ Since Jeannette is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. Although the Commission has imposed a freeze on television allotments in certain metropolitan areas, and Jeannette is included in the Pittsburgh freeze area, our consideration of the Jeannette reallocation is not precluded by the Freeze Order because the proposal would not result in a new allotment but merely the reallocation of an existing allotment. See Sixth Further Notice of Proposed Rule Making, *supra*, at 10992. However, such a modification would be conditioned on the outcome of the DTV proceeding. As requested, we shall also propose to modify Station WTWB-TV's license to specific operation on Channel 19+ at Jeannette, Pennsylvania. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of UHF Television Channel 19+ at Jeannette.

²All population figures are taken from the 1990 U.S. Census

³The television allotment priorities are (1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station,; (3) to provide a choice of at least two television services to all part of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. Sixth Report and Order, 41 FCC 148, 167 (1952).

⁴The coordinates for UHF Television Channel 19+ at Jeannette are North Latitude 40-10-51 and West Longitude 79-07-46.

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 communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Johnstown, Pennsylvania	6, 8-, 19+, *28+	6, 8-, *28+
Jeannette, Pennsylvania	—	19+

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 May 12, 1997, and reply comments on or before May 27, 1997, 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:

Irving Gastfreund, Esq.
 Kaye, Scholer, Fierman, Hays & Handler, LLP
 901 15th Street, NW., Suite 1100
 Washington, DC 20005-2327
 (Counsel for Petitioner)

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 TV Table of Allotments, Section 73.606(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. IT IS ORDERED, That the Petition for Reconsideration filed by Venture Technologies Group, Inc., is DISMISSED as moot.

10. For further information concerning this proceeding, contact Sharon P. McDonald, 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 the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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

Attachment: Appendix

APPENDIXMM Docket No. 97-96
RM-8756

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 TV Table of Allotments, Section 73.606(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 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.