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

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|--|---|----------------------|
| In the Matter of                       | ) |                      |
|  | ) |                      |
| Amendment of Section 73.606(b),        | ) | MM Docket No. 99-238 |
| Table of Allotments,                   | ) | RM-9669              |
| TV Broadcast Stations.                 | ) |                      |
| (North Pole and Plattsburgh, New York) | ) |                      |
|  | ) |                      |
| Amendment of Section 73.622(b),        | ) |                      |
| DTV Table of Allotments,               | ) |                      |
| DTV Broadcast Stations.                | ) |                      |
| (North Pole and Plattsburgh, New York) | ) |                      |

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: June 23, 1999**

**Released: July 2, 1999**

Comment Date: August 23, 1999  
Reply Comment Date: September 7, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Hearst-Argyle Stations, Inc. ("petitioner"), licensee of TV Station WPTZ, Channel 5, and DTV Station WPTZ, Channel 14, North Pole, New York. Petitioner requests the reallocation of NTSC Channel 5 and DTV Channel 14 from North Pole, New York, to Plattsburgh, New York, as the community's first local commercial television service, and the modification of the license for Station WPTZ and DTV Station WPTZ to specify Plattsburgh as its community of license.

2. Petitioner filed its rule making pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties the 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 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In order to determine whether the proposal before will result in a preferential arrangement of allotments, we will be guided by the television allotment priorities set forth in the Sixth Report and Order on Television Allocations, 41 FCC 148 (1952).<sup>1</sup>

<sup>1</sup> The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location,

3. Petitioner states that the allotment of NTSC Channel 5 and DTV Channel 14 at North Pole and Plattsburgh is mutually exclusive since it is not requesting a change in transmitter site and the communities are located approximately 30 miles apart. Further, because no change in transmitter site is being sought, there will be no change in the area and population encompassed by the signals of the station. Petitioner contends that a grant of its request would result in a preferential arrangement of allotments even though Station WPTZ represents North Pole's sole local television broadcast service. It recognizes that the Commission has stated its reluctance to remove a community's sole local broadcast service, citing Bessemer and Tuscaloosa, Alabama, ("Bessemer"), 5 FCC Rcd 669 (1990), app. for rev. granted, 11 FCC Rcd 11585 (1996). However, it argues that North Pole and Plattsburgh are, in reality, one community, stating that the Commission has generally recognized that television is a regional service and thus employs an expanded definition of "community" in television assignment cases, citing Bessemer, supra at 670. In addition, it points out that both North Pole and Plattsburgh are located in the Burlington-Plattsburgh Designated Market Area ("DMA").<sup>2</sup>

4. In describing North Pole, petitioner states that it has always been a small village which, over time, has lost population and stores have closed. It states that North Pole does not have its own police or fire departments, or its own newspaper. In fact it states that North Pole's sole attraction is "Santa's Workshop." Additionally, it states that there presently are only four houses near North Pole's main intersection and that the few people who do reside in North Pole come into Plattsburgh to conduct all of their business, such as shopping, seeking medical assistance, banking, etc. Petitioner goes on to state that none of the station's employees actually live in or near North Pole.

5. We believe petitioner's proposal warrants consideration and hereby propose to reallocate NTSC Channel 5 and DTV Channel 14 from North Pole to Plattsburgh, New York.<sup>3</sup> We are aware that the reallocation of Station WPTZ's NTSC and DTV channels would result in the removal of North Pole's sole local television broadcast service in order to provide Plattsburgh with its second local and first commercial television service.<sup>4</sup> However, we believe that North Pole may no longer qualify as a community for allotment purposes and with no change in transmitter site, there will be no loss of reception service by anyone presently receiving Station WPTZ's signal. While petitioner states that North Pole has a 1990 Census population of 4,656 persons, we find that this listing is for the population served by zip code 12946, not for North

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and the number of television services available to the community from stations located in other communities.

<sup>2</sup> See Television & Cable Factbook, pg. A-792 (vol. 66, 1998).

<sup>3</sup> The reference coordinates for NTSC Channel 5 and DTV Channel 14 are 44-34-26 North Latitude and 73-40-29 West Longitude.

<sup>4</sup> Noncommercial educational Station WCFE-TV is currently licensed to Plattsburgh.

Pole alone.<sup>5</sup> In fact, North Pole is not listed in the 1990 U.S. Census and zip code 12946, according to the U.S. Postal Service is primarily for the community of Lake Placid, with North Pole as a secondary listing ([www.usps.gov/cgi.bin/zip4/ctystzip](http://www.usps.gov/cgi.bin/zip4/ctystzip)). Further, the post office at North Pole is classified as a community post office, which petitioner states is only open during the Christmas season.<sup>6</sup> We are also unable to find that North Pole has any of the indicia which the Commission routinely uses to determine community status. Specifically, it appears that North Pole does not have any local schools, library, community organizations or local businesses, with the exception of Santa's Workshop. Plattsburgh, on the other hand, clearly qualifies as a community for allotment purposes. It has a 1990 U.S. Census population of 17,231 persons. It has its own local government, police and fire departments, post office, and public and private secondary schools. In addition, Plattsburgh is home to several colleges, such as Plattsburgh State University and NY Empire State College. Plattsburgh also has numerous religious institutions and a number of businesses, such as banks, restaurants, grocery stores, etc. Therefore, we request comments on the reallocation of NTSC Channel 5 and DTV Channel 14 from North Pole, New York, to Plattsburgh, New York, and the modification of the Station WPTZ authorizations accordingly. In accordance with Section 1.420(i), we will not accept competing expressions of interest in use of these channels or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. 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>City</u>           | <u>Channel No.</u> |                 |
|-----------------------|--------------------|-----------------|
|                       | <u>Present</u>     | <u>Proposed</u> |
| North Pole, New York  | 5                  | --              |
| Plattsburgh, New York | *57                | 5, *57          |

<sup>5</sup> While not an official source for population listings, we note that the 1998 Rand McNally Commercial Atlas attributes North Pole with a population of 70 people.

<sup>6</sup> The U.S. Postal Service defines community post offices as contract units that provide service in small communities, bearing the community name as part of a recognized last line of mailing address and mailing names are defined as recognized last lines of address names for locations with or without established postal facilities. See 1999 National Five-Digit Zip Code and Post Office Directory.

We are also soliciting comments on the proposed amendment to the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, with respect to the same communities, as follows:

| <u>City</u>           | <u>Channel No.</u> |                 |
|-----------------------|--------------------|-----------------|
|                       | <u>Present</u>     | <u>Proposed</u> |
| North Pole, New York  | 14                 | --              |
| Plattsburgh, New York | *38                | 14, *38         |

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 August 23, 1999, and reply comments on or before September 7, 1999, 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:

Mark J. Prak  
 Coe W. Ramsey  
 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.  
 First Union Capitol Center  
 Suite 1600  
 P.O. Box 1800  
 Raleigh, NC 27602  
 (Counsel to petitioner)

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) 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 1989 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 Leslie K. Shapiro, 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

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 TV Table of Allotments, Section 73.606(b), and 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 Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.