

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

In the Matter of )  
)  
Amendment of Section 73.622(b) )  
Table of Allotments )  
Digital Television Broadcast Stations )  
(Salt Lake City, Ogden and Provo, Utah) )

MM Docket No. 99-197  
RM-9573

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**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: May 15, 2000**

**Released: May 18, 2000**

By the Commission:

1. At the request of eight television stations in the Salt Lake City, Utah, television market ("DTV Utah")<sup>1</sup>, the Commission has before it the *Notice of Proposed Rule Making*, 14 FCC 7757 (1999) ("Notice") in the above-captioned proceeding proposing changes to the DTV Table of Allotments. Specifically, DTV Utah requests the substitution of Channel \*44 for Channel \*39 as the reserved NCE channel assigned to KBYU-TV, Provo; the substitution of Channel 46 for Channel 27 as the DTV channel assigned to KJZZ-TV, Salt Lake City; the substitution of Channel \*36 for Channel \*34 as the reserved NCE DTV channel assigned to KULC, Ogden; and the substitution of Channel 48 for Channel 17 as the DTV channel assigned to KUWB, Ogden. DTV Utah filed comments in support of the proposal. Utah Communications, L.L.C. ("Utah Communications"), licensee of Station KAZG, Channel 24, Ogden, filed comments styled as a counterproposal. Tooele 36, L.L.C. ("Tooele 36"), proponent of a Petition for Rule Making requesting the allocation of NTSC Channel 36 to Tooele, Utah, also filed comments.<sup>2</sup> Finally, DTV Utah filed reply comments.

2. In their comments, DTV Utah states that their proposal is regional in scope and was developed with the extraordinary efforts of State of Utah broadcasters to advance the quick and

<sup>1</sup> The licensees of these eight stations are: Brigham Young University (NCE Station KBYU-TV); Larry H. Miller Communications Corporation (Station KJZZ-TV); Bonneville Holding Company (Station KSL-TV); United Television, Inc. (Station KTVX); University of Utah (NCE Stations KUED and KULC); KUTV Associates (Station KUTV); and ACME Television Licenses of Utah, LLC (Station KUWB).

<sup>2</sup> Airwaves Inc. ("Airwaves") and Telemundo of Northern California License Corporation ("Telemundo") filed comments and subsequently requested withdrawal of their pleadings. Airwaves' initial comments were late-filed and will therefore not be discussed herein. Telemundo, licensee of low-power television station KEJT-LP, Channel 48, Salt Lake City, Utah, filed comments opposing DTV Utah's proposal, claiming it could adversely affect the ability of station KEJT-LP to continue to provide Spanish-language news, information and entertainment programming to the Salt Lake City area. Specifically, Telemundo asserted that its participation in the master channel plan was in jeopardy due to a dispute with Brigham Young University, licensee of translator station K50ES. However, in reply comments, Telemundo reported that its concerns had been allayed and it requested the withdrawal of its pleading. Accordingly, both Airwaves' and Telemundo's pleadings will be dismissed.

efficient implementation of DTV in the market. Under the DTV Utah plan, the DTV Utah stations will be able to co-locate their digital operations on a single tower. According to DTV Utah, this proposal will permit an efficient and economical tower design and operation for each station, will result in the construction of fewer towers in Utah, and will promote DTV reception from antennas oriented towards the single tower, thereby facilitating consumer interest in and access to DTV services. DTV Utah reiterates the need for the proposed channel plan as a whole to be adopted.<sup>3</sup> They submit that the proposal is essential to prevent harmful interference and engineering obstacles not only to the eight stations proposing to co-locate, but also with the NTSC and DTV operations of other area full-power stations. DTV Utah also states that they have taken steps to ensure that this proposal will not disrupt existing LPTV and translator services in the area.

### Utah Communications

3. Utah Communications states that on July 24, 1996, prior to the "freeze" on the filing of proposals for new NTSC allotments, it requested that the TV Table of Allotments be modified to substitute NTSC Channel 42 for Channel 24 at Ogden. Thereafter, the Commission released *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*"). Utah Communications claims that as a result of the *Sixth Report and Order*, Channel 42 is no longer suitable for use in Ogden as an analog assignment. Thereafter, on July 28, 1998, Utah Communications "supplemented" its pending rule making petition to amend its proposal by requesting the substitution of Channel 49 for Channel 24 at Ogden as an NTSC allocation. It now states that its "timely-filed" proposal to operate on Channel 49 at Ogden is mutually exclusive with DTV Utah's plan to change Channel 29 to Channel 48 there, and that its petition must be consolidated with and considered part of this docket.<sup>4</sup> In its reply comments, DTV Utah contends, among other things, that Utah Communications' July 1998 filing proposing to allot Channel 49 to Ogden was filed long after July 25, 1996 -- the last date the Commission would accept petitions to amend the TV table to add allotments for new NTSC stations -- and is therefore entitled to no protection as against its proposal.

4. **Discussion.** We will not incorporate Utah Communications' proposal into this proceeding as it requests. A study by our engineering staff indicates that DTV Utah's proposal to allot DTV Channel 48 at Ogden would not be mutually exclusive with the Utah Communications'

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<sup>3</sup> DTV Utah notes that there are three inter-dependent components to their joint tower channel plan: (1) the proposed DTV channel substitutions for stations KBYU-TV, KJZZ-TV, KULC, and KUWB, (2) an intra-market channel swap between KUTV and KULC pursuant to Sections 73.622(c) and 73.623(f) of the Commission's rules, and (3) the retention by KSL-TV, KTVX, and KUED of the DTV channels allotted to them with facilities or site changes.

<sup>4</sup> Utah Communications maintains that DTV Utah's proposal was not properly treated as a counterproposal to its own "existing" rule making petition, requiring that it now be considered in this proceeding.

plan for NTSC Channel 49. It appears that both stations are essentially co-located. Specifically, Utah Communications' proposed site is about 0.43 km from the proposed site for DTV Channel 48. As a result, Utah Communications' proposal complies with Section 73.623(d), which requires the geographic spacing separation for adjacent-channel DTV to analog TV in Zone II to be less than 12 km or more than 106 km. Therefore, we will not consider Utah Communications' proposal in the context of this proceeding, and its pending rule making petition will be addressed in a separate proceeding.<sup>5</sup>

### Tooele 36

5. Tooele 36 states that on July 23, 1996, it filed both a petition for rule making requesting the allotment of NTSC Channel 36 to Tooele, Utah, as the community's first local television service, and an application to construct a new facility to operate on that frequency. It states that DTV Utah's proposal to allot DTV Channel 36 to Ogden is mutually exclusive with its previously filed petition and application. Tooele 36 requests that the Commission consolidate its petition into this proceeding, modify the DTV Utah proposal to avoid any conflict with its proposed allotment of NTSC Channel 36 to Tooele, and grant that petition. Tooele 36 argues that there is no technical or other advantage to moving DTV Channel 34 to DTV Channel 36 at Ogden. It believes that DTV Utah can still accomplish their plans of colocating eight DTV stations on one tower, and notes that DTV Channels 34 and 35 will work just as well as DTV Channels 35 and 36 for Stations KULC, Ogden, and KUTV, Salt Lake City. Tooele 36 also argues that there are numerous suitable channels other than DTV Channel 36 to allot to Ogden and for KULC to move to. Moreover, Tooele 36 asserts that the Commission, in implementing DTV, undertook to protect rule makings for new allotments and modified the originally proposed Table of DTV Allotments so that the "final table" protected NTSC Channel 36 at Ogden. Finally, Tooele 36 maintains that the Commission has always favored bringing a first local service to a community over facilities modifications and, therefore, the grant of its requested relief better serves the public interest than the DTV Utah's proposed modifications.

6. In reply comments, DTV Utah contends that its proposal, as set forth in its Petition substantially advances the goals of the Commission and Congress to advance the transition to DTV technology. They state that the substantial investment and cooperative efforts of the commercial and noncommercial stations involved, as well as the LPTV and translator communities, have lead to a master plan that will not only reduce the burden of DTV transition

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<sup>5</sup> We do not agree with DTV Utah that Utah Communications' petition to amend the TV Table of Allotments to allot Channel 49 to Ogden is precluded because it was filed after the date the Commission announced it would no longer accept petitions to amend the existing TV Table of Allotments to add an allotment for a new NTSC station. While the Commission did state that such petitions would no longer be accepted, we also indicated that other petitions to modify an existing station's authorization, such as Utah Communications' petition to change channels, could continue to be filed, but that any such changes would be conditioned on the outcome of the DTV rule making proceeding. See *Sixth Report and Order*, 12 FCC Rcd at 14635-36.

for all the stations involved, but will also permit full-power and secondary services to coexist during that transition. DTV Utah stresses that this is just the type of cooperative arrangement that the Commission has encouraged to insure for the public "the best use of the digital spectrum, including not only the most efficient use of the spectrum but also the greatest array of valuable services."<sup>6</sup> DTV Utah maintains that Tooele 36 has advanced no legal or public policy basis to "derail" its proposal.

7. Specifically, DTV Utah states that its requested amendments to the DTV Table of Allotments are in full compliance with the Commission's rules and can (and should) be immediately granted. They maintain that Tooele 36 misunderstands the overall proposal when it urges that DTV Channel 34 can be used in lieu of DTV Channel 36 at Ogden. They assert that their proposal contemplates the use of both DTV Channels 34 and 36, with Channel 35 returned to the pool of unused channels, and that the other alternative channels suggested by Tooele 36 will not permit DTV Utah to move forward with its optimized eight station joint tower project, "each component of which is critical to the success of the whole."<sup>7</sup>

8. DTV Utah also argues that Tooele 36's "eleventh-hour" proposal to amend the table of allotments is not entitled to "protection." They note that although the Commission decided to avoid conflicts between DTV and NTSC allotments in developing the initial DTV Table of Allotments, the Commission also recognized that amendments to the DTV table would be appropriate, particularly when broadcasters in a region combine to develop a cooperative plan for implementing DTV, and established procedures which do not require protection of pending rule making petitions. Because the DTV Utah stations provide existing service as opposed to Tooele 36 which, by its own admission, is a mere petitioner with no vested interest or claim to Channel 36, and because the Commission has made clear that the licensing of NTSC stations will come to an end, DTV Utah contends that the public interest favors the grant of its proposal. Finally, DTV Utah states that other alternatives to NTSC Channel 36 are available to Tooele 36 should the Commission determine that the addition of a new NTSC channel to that community is appropriate.<sup>8</sup> Accordingly, they contend that the assignment of another NTSC channel to Tooele

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<sup>6</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 12809, 12834 (1997). See also *Additional Application Processing Guidelines for Digital Television*, Public Notice (August 11, 1998) at 11.

<sup>7</sup> DTV Utah reiterates that their proposal involves the relinquishment of DTV Channel 35 for DTV Channel 36, and the retention of both DTV Channels 34 and 36. Specifically, Station KULC is swapping its initial DTV allotment (Channel \*34) for Station KUTV's initial DTV allotment (Channel 35). The purpose of this channel swap is to permit KUTV to operate on DTV Channel 34 and to allow KULC to participate in the DTV Utah plan by exchanging its swapped channel (Channel \*35) for Channel \*36. The failure to allot and assign DTV Channel \*36 as proposed in the *Notice*, DTV Utah argues, will disrupt this swapping arrangement, and unravel the proposal as a whole.

<sup>8</sup> In this regard, DTV Utah states that its proposal does not reduce the number of unoccupied channels in the market, and thus does not preclude or inhibit the Commission from considering an appropriate amendment to

could be addressed in due course without jeopardizing, compromising or delaying the public interest benefits of the DTV Utah proposal.

9. **Discussion.** We have carefully reviewed all of the pleadings before us and, for the reasons that follow, we find that the public interest will be served by adopting DTV Utah's channel reallocation proposal. That plan will enable the eight Utah stations to share facilities, costs and equipment in converting to and operating with DTV technology, while permitting full-power and secondary services to coexist during that transition. On balance, that plan better serves the goals of full DTV implementation and outweighs the individual interests advanced by Tooele 36 in its rule making petition.

10. In reaching this conclusion, we do not agree with Tooele 36 that its pending rule making to assign NTSC Channel 36 to Tooele, Utah, is entitled to blanket protection or preferred status over the DTV Utah proposal. In that regard, while it may be true that the Commission, in establishing the initial DTV Table of Allotments, decided to retain those vacant NTSC allotments that were the subject of pending rule making petitions and to avoid creating conflicting DTV allotments, there is no basis to conclude, in light of the clear preference to move to full DTV implementation, that amendments to the DTV table require absolute protection of such previously filed petitions.<sup>9</sup> Such an inflexible approach would undermine the Commission's announced course to phase out vacant NTSC channels; to accommodate existing stations (particularly groups of broadcasters proposing regional plans) over new or proposed stations; and to encourage new stations to operate with new DTV technology.

11. Moreover, and without regard to whether the placement of a channel – either NTSC or DTV – to serve the community of Tooele is appropriate, the licensing of any future station on that channel is predicated on a finding that it will not have a significant negative impact on the development of DTV, and the Commission has reserved the right in specific cases to determine that the public interest is better served by not granting such an application.<sup>10</sup> Tooele 36 has not adequately demonstrated that the benefit of the mere potential allotment of an NTSC channel at Tooele offsets the coordinated implementation of DTV service as set forth in the DTV Utah master plan. On the other hand, the DTV Utah regional plan will accommodate existing services (including existing LPTV and translator services) while avoiding harmful interference that would

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Tooele 36's petition, specifying another channel, in a separate proceeding to amend the NTSC table.

<sup>9</sup> See *Sixth Report and Order*, 12 FCC Rcd at 14639. Moreover, protection of pending NTSC rule making petitions was not a factor to be considered in existing licensees' proposals to amend the DTV Table of Allotments. See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, MM Docket No. 87-268, 13 FCC Rcd 7418, 7482 (1998).

<sup>10</sup> *Sixth Report and Order*, 12 FCC Rcd at 14635. See also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, MM Docket No. 87-268, 14 FCC Rcd 1348, 1366-68 (1998).

otherwise preclude co-location of the DTV Utah stations and without causing interference to other NTSC or DTV stations in the market. The DTV Utah plan also will not reduce the number of unoccupied channels in the market, and therefore does not preclude or inhibit the Commission from acting on pending rule making petitions in separate proceedings to amend the NTSC Table of Allotments to the extent that such action is deemed to be in the public interest. In addition, DTV Utah's single-tower plan will result in the construction of fewer towers in Utah, will facilitate DTV transition for the existing stations which form this regional coalition and will increase consumer acceptance and use of DTV services, which, by extension, will facilitate DTV transition in the market as a whole. The balance here clearly favors DTV Utah's regional plan to accommodate existing services and to advance the implementation of DTV service generally over Tooele 36's individual NTSC channel rule making petition, which may not even result in a viable service on NTSC Channel 36. Moreover, Tooele 36 does not claim that no other channel is available to it to pursue its objective to provide service to Tooele, Utah, whereas DTV Utah asserts that other channels are so available. The balance that we make today favoring the implementation of the DTV Utah plan over Tooele 36's attempt to have a channel assigned to Tooele, precludes its use of Channel 36 as proposed in its petition. It appears, however, that NTSC Channels 55 or 58 may be available for allotment at Tooele. In any event, Tooele 36 may pursue another appropriate channel for its proposed allotment by amending its pending rule making petition during the currently open window filing opportunity.<sup>11</sup>

### **Conclusions and Ordering Clauses**

12. Channels \*36, \*44, 46 and 48 can be substituted and allotted to Ogden, Provo, Salt Lake City, and Ogden, Utah, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40-39-33 N and 112-12-07 W). In addition, we find that these channel changes are 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) for stations KULC, KBYU-TV, KJZZ-TV, KUWB with the following specifications:

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<sup>11</sup> See *Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations*, Public Notice, DA 00-536 (March 9, 2000).

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)	DTV Service Pop. (thous.)
UT Provo	*44	403.0	1257	1389
UT Ogden	*36	304.0	1257	1393
UT Ogden	48	200.0	1257	1374
UT Salt Lake City	46	200.0	1267	1384

13. Accordingly, pursuant to the authority contained 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 ORDERED, That effective July 3, 2000, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the Utah communities listed below, to read as follows:

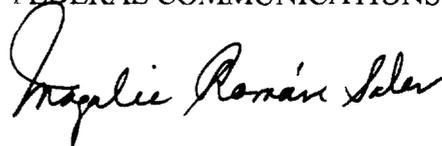
<u>Community</u>	<u>Channel No.</u>
Ogden	*36, 48
Provo	29, *44
Salt Lake City	28, 34, 38, 40, *42, 46

14. IT IS FURTHER ORDERED, That the comments filed by Airwaves, Inc., Telemundo of Northern California License Corporation, and Utah Communications, L.L.C. ARE DISMISSED, and the comments filed by Tooele 36, L.L.C. ARE DENIED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.<sup>12</sup>

16. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

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<sup>12</sup> The licensees receiving new digital television channel assignments as a result of this proceeding are set forth in the attached appendix.

APPENDIXTELEVISION LICENSEES RECEIVING NEW DIGITAL TELEVISION CHANNEL  
ASSIGNMENTS

<u>Call Sign</u>	<u>Location</u>	<u>Licensee</u>	<u>Old DTV Channel</u>	<u>New DTV Channel</u>
KULC(TV)	Ogden	University of Utah	*34	*36
KUWB(TV)	Ogden	ACME Television Licenses of Utah, LLC	17	48
KBYU-TV	Provo	Brigham Young University	*39	*44
KUTV(TV)	Salt Lake City	KUTV Associates	35	34
KJZZ-TV	Salt Lake City	Larry H. Miller Communications Corp.	27	46