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Federal Communications Commission

DA 00-2597

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

In the Matter of

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Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Lead, South Dakota)

MM Docket No. 00-235
RM-9992

NOTICE OF PROPOSED RULE MAKING

Adopted: November 22, 2000

Released: November 24, 2000

Comment Date: January 16, 2001
Reply Comment Date: January 31, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Duhamel Broadcasting Enterprises ("Duhamel"), licensee of station KHSD-TV, NTSC Channel 11, Lead, South Dakota. Duhamel requests the substitution of DTV channel 10 for station KHSD-TV's assigned DTV channel 30.

2. In support of its proposal, Duhamel states that the allotment of a VHF channel, rather than a UHF channel, is necessary to facilitate the introduction of digital television service to the vast, sparsely populated, rural area served by KHSD-TV. Duhamel contends that in order to implement DTV channel 30 at Lead, it would require Duhamel to construct a new tower facility because KHSD-TV's current facility cannot support the weight of an additional UHF antenna. Duhamel states that eliminating the need to build a new tower would also avoid any local zoning and aeronautical controversies and viewer disruption due to antenna orientation problems. Duhamel argues that the increased cost involved in constructing the new tower to support a television UHF operation and the increased equipment costs and sustained operating costs of operating an UHF DTV facility presents a real impediment to the implementation of digital television in a small television market, an impediment that be removed by adopting KHSD-TV's channel substitution. More importantly, Duhamel claims adoption of its proposal will result in service to a greater number of people.

3. We believe petitioner's proposal warrants consideration. DTV Channel 10 can be substituted for DTV Channel 30 at Lead, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (44-19-36 N. and 103-50-12 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 10 for DTV Channel 30 for station KHSD-TV at Lead with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
SD Lead	10	34.8	576

4. 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 as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Lead, South Dakota	29, 30	10, 29

5. 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.

6. Interested parties may file comments on or before January 16, 2001, and reply comments on or before January 31, 2001, 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:

Colette M. Capretz
 Shaw Pittman
 2300 N Street, NW
 Washington, DC 20037-1128
 (Counsel for Duhamel Broadcasting Enterprises_

7. 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.

8. 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.