

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations.
(Bath, New York)**)
)
)
)

**MM Docket No. _____
RM - _____**

**Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations.
(Syracuse, New York)**)
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)

**TO: Chief, Allocations Branch
Policy and Rules Division
Media Bureau**

**OPPOSITION TO PETITION FOR RULEMAKING
TO AMEND THE TV AND DTV TABLE OF ALLOTMENTS**

William H. Walker, III ("Walker"), an applicant for a new TV station on Channel 14 in Bath, New York opposes the Petition for Rulemaking to Amend the TV and DTV Table of Allotments filed by Paxson Syracuse License, Inc. ("Paxson"), licensee of commercial station WSPX-TV, Syracuse, New York. Paxson proposes to delete the only channel allocated to Bath, New York, Channel 14, and have it reallocated to Syracuse, New York as the seventh digital allocation to that city.'

Walker is the sole applicant for Channel 14 in Bath, New York. He has been pursuing his application since it was filed on March 31, 1987. He has filed all requested amendments and has, through counsel, met with Commission staff in an effort to expedite the grant of this long pending application. Now, when Walker expects the imminent grant of his application, Paxson proposes deletion of the channel.

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'To the extent necessary Walker requests leave to file this opposition. Consideration of the opposition is in the public interest since it directly addresses claims made by Paxson which can and should be resolved before any rule making is initiated. In the alternative, this opposition should be considered an informal objection.

Paxson's proposal is contrary to the public interest. The public interest would be dis-served and the statutory scheme violated by deleting the only television allocation in Bath, New York and reallocating the channel to the already well served Syracuse. New York market. 47 U.S.C Section 307(b) mandates that Channel 14 remain allocated where it is in Bath, New York. The Commission in applying 307(b) awards a heavy preference for a first broadcast outlet to a community as opposed to an additional service to a market already well served. As noted by the Court of Appeals,

The Commission's *Sixth Report on Television Allocations*, Vol 1, Part 3, Rad. Reg. (P&F) 91.601, 91.620 (1952), which carried out the mandate of 47 USC 151 and 307 (b), established five priorities for channel allocation: (1) a first service to all parts of the country; (2) a local station in each community; (3) a choice of two services to all parts of the country; (4) two stations in each community; and (5) additional stations based on population, location and number of services available.

Archerer Broadcasting Company v. FCC 78 RR2nd 1369 (D.C. Cir. 1995)

Paxson's argument that Channel 14 should be reallocated is even less compelling since it is requesting that the channel be allocated as a paired digital allocation. Syracuse will not be denied service offered by Paxson if the channel is not reallocated. Rather, Paxson will be denied a second channel. Any interest in a second channel to an already well served market pails in comparison to provision of a first service to Bath, New York. The Commission has already determined that stations

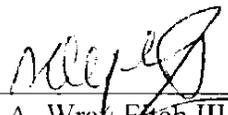
¹See also, *Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service License* 13 FCCRcd 15920 (1998).

As set forth in Sections 307(b) of the Communications Act, the Commission is charged with the duty to make such distribution of broadcast licenses "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same. 47 U.S.C. Sec. 307(b) Section 307(b), however enunciates this mandate without denoting the procedure to be employed to effectuate the fair, efficient and equitable distribution of radio service. Over the years, the Commission has used a variety of means to implement the Section 307(b) directive. Previously, when mutually exclusive applicants sought authority to construct broadcast stations to serve different communities, the Commission, in the context of the comparative hearing process, implemented the Section 307(b) mandate by first determining which community had the greatest need for additional service, before addressing the comparative qualifications of the applicants... The Commission altered this approach for implementing Section 307(b) in the commercial FM and television services by establishing and incorporating in its rules a Table of Allotments for each service... The Commission fulfills the 307(b) obligation by making available for licensing only a frequency that has been assigned to a specific community in the Table of Allotments through a rulemaking proceeding. A system of priorities guides the Commission's 307(b) determinations, setting preferences for applicants proposing to establish a station in a non-served or underserved community

like Paxson's WSPX-TV in Syracuse are not entitled to a paired digital allocation. See, *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588, ¶¶ 8-11 (1997). Paxson is not entitled to a paired channel especially at the expense of deleting a first service allocation.³

Respectfully submitted,

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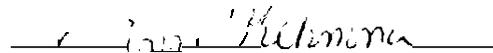
³ Paxson cites *Fort Walton Beach, Florida*, MM Docket No. 00-233, *Notice of Proposed Rulemaking*, DA 00-2595 (2000) to support its position. This proposed rulemaking is not at all helpful. First, the licensee in the Fort Walton Beach proceeding was proposing a substitution of a digital TV channel, not the allocation of a paired digital channel. More importantly, the proponent was not proposing a deletion from the table of allotments of a community's only television service.

CERTIFICATE OF SERVICE

I, JoAnne Kehmna, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 4th day of December, 2002. by first-class. postage prepaid, U.S. Mail, copies of the foregoing OPPOSITION PETITION FOR RULEMAKING TO AMEND THE TV AND DTV TABLE OF ALLOTMENTS to the following:

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