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

In the Matter of	)	
	)	
Amendment of Section 73.622(i),	)	MB Docket No. 08-129
Final DTV Table of Allotments,	)	RM-11461
Television Broadcast Stations.	)	
(Spokane, Washington)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 22, 2008 **Released: July 23, 2008**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a petition for rulemaking filed by KHQ, Incorporated ("KHQ"), the licensee of station KHQ-DT, DTV channel 7, Spokane, Washington, and a related petition for rulemaking filed by Spokane School District #81 ("Spokane School District"), licensee of noncommercial educational station KSPS-DT, DTV channel *8, Spokane, Washington. KHQ requests the substitution of DTV channel 15 for its assigned DTV channel 7, at Spokane, and KSPS-DT requests substitution of DTV channel *7, its current analog channel, for its assigned DTV channel *8, at Spokane.

2. According to both petitioners, station KHQ-DT and station KSPS-DT entered into a Negotiated Channel Election Agreement on February 8, 2005, whereby KSPS-DT agreed to operate digitally on DTV channel *8 rather than remain on DTV channel *7 so that KHQ-TV could move to DTV channel 7 after the transition. However, KHQ states that station KHQ-DT's move to DTV channel 15 will permit it to construct a maximized facility, which it cannot do on its assigned DTV channel 7. In addition, because station KSPS-DT currently operates on analog channel *7, KHQ states that it will be unable to commence broadcasting on DTV channel 7 until station KSPS-TV terminates analog broadcasts. KHQ maintains that the proposed substitution would permit it to avoid a "phased-in" transition that would potentially confuse the public. Spokane School District states that "[r]e-alloting digital Channel 7 to KSPS-TV not only allow KSPS-TV to remain on its analog channel post-transition, it also allows KSPS-TV to increase coverage to serve 13,000 additional people."[1] Spokane School District further states that "reception at remote mountaintop sites for TV translators that retransmit KSPS-TV's signal will suffer less first harmonic interference from co-located FM translators if KSPS-TV operates digitally on [c]hannel 7."[2] Finally, Spokane School District states that the proposed substitution will permit station KSPS-DT to broadcast digitally on a channel that does not have any short-spacings to any Canadian stations or allotments.

3. We believe that KHQ's and Spokane School District's proposals warrant consideration. DTV channel 15 can be substituted for DTV channel 7, and DTV channel *7 can be substituted for DTV

[1] *Spokane School District Petition for Rulemaking*, at 2.
[2] *Id.*

channel *8 at Spokane, Washington, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) of the Commission's rules,[3] at coordinates 47-34-52 N. and 117-17-47 W., and at coordinates 47-34-34 N. and 117-17-58 W. Since the proposed facilities are located within the Canadian coordination zone, concurrence from the Canadian government must be obtained for these allotments. In addition, we find that the proposed channel changes meet the technical requirements set forth in Sections 73.616, 73.622(f)(5), and 73.623 of the Commission's rules.[4] Because these two proposals are interrelated, we will consider them jointly. Thus, we propose to substitute DTV Channel 15 for DTV Channel 7 for station KHQ-DT, and substitute DTV Channel *7 for DTV Channel *8 for station KSPS-DT, at Spokane, Washington, with the following specifications:

State and City	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Spokane, Washington	15	1,000	653
Spokane, Washington	*7	45.1	558

4. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(i) of the Commission's rules,[5] for the community listed below, to read as follows:

	Channel No.	
City and State	Present	Proposed
Spokane, Washington	7, *8, 13, 20, 28, 34, 36	*7, 13, 15, 20, 28, 34, 36

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 addition, when the Commission lifted the freeze on the filing of DTV maximization applications and petitions for digital channel substitutions,[6] it announced that until the end of the statutory DTV transition on February 17, 2009, mutually-exclusive applicants would be provided a 30-day period of time, from the date of a public notice identifying mutually-exclusive proposals, to resolve their mutual-exclusivity via engineering amendment or settlement, rather than the 90-day period afforded by Section 73.623(h) of the rules.[7] Similarly, we will also shorten the settlement period for rulemaking petitions and mutually-exclusive maximization applications. If we receive a maximization application on or before the date for filing initial comments in this proceeding, which proposes a facility which is mutually-exclusive with the proposal set forth herein, we will issue a public notice and the parties will have 30 days within which to resolve their mutual-exclusivity. If the parties resolve their mutual exclusivity, we will complete the rulemaking process by issuing the appropriate order. If the parties are unable to resolve their mutual-exclusivity, we will terminate this proceeding and dismiss the maximization application.

[3] 47 C.F.R. § 73.625(a).

[4] 47 C.F.R. §§ 73.616, 73.622(f)(5), and 73.623.

[5] 47 C.F.R. § 73.622(i).

[6] *See* Commission Lifts the Freeze on the Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately, DA 08-1213 (released May 30, 2008).

[7] 47 C.F.R. § 73.623(h)(3).

6. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [30 days after publication in the Federal Register] and reply comments on or before [45 days after publication in the Federal Register], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David H. Pawlik, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

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Fifth Floor
Washington, D.C. 20007-3501

7. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.[8] Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

9. For further information concerning the proceeding listed above, contact David J. Brown, 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 in the applicable docket is no longer subject to reconsideration by the Commission or review by

[8] See 47 C.F.R. § 1.7.

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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket 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 Division
Media Bureau

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the DTV Table of Allotments, 47 C.F.R. Section 73.622(i), 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 the 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.) Because the Commission has not yet lifted its freeze on the filing of petitions for rulemaking to establish new DTV channel allotments and for changes in community of license,[9] we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rule making which conflict with the proposal 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 47 C.F.R. Sections 1.415 and 1.420, 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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be

[9] *See* Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810 (MB 2004).

furnished the Commission. An electronic copy should also be sent to david.brown@fcc.gov.

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. 20554.