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

In the Matter of	)	
	)	
Amendment of Section 73.622(i),	)	MB Docket No. 08-155
Final DTV Table of Allotments,	)	RM-11479
Television Broadcast Stations.	)	
(Honolulu, Hawaii)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 24, 2008 **Released: July 28, 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 HITV License Subsidiary, Inc. ("HITV"), the licensee of stations KGMB(TV), analog channel 9 and KGMB-DT, DTV channel 22, Honolulu, Hawaii. The previous licensee of the station had elected channel 9 as its post-transition DTV channel and HITV now requests the substitution of the station's pre-transition DTV channel 22 for channel 9 at Honolulu.

2. HITV states that after it acquired the station, it determined that replication of the existing service area on channel 9 may not be possible, given the fact that two other stations in the market have elected channels 8 and 10 for post-transition use at a different site than KGMB-DT. According to HITV, unlike operations on channel 9, operation on channel 22 will have only one adjacent-channel station in the market, on channel 23, and HITV intends to co-locate with that station, which will minimize interference.

3. We believe that HITV's proposal warrants consideration. DTV channel 22 can be substituted for DTV channel 9 for post-transition use at Honolulu, Hawaii as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) of the Commission's rules,[1] at coordinates 21-24-3 N. and 158-06-10 W.[2] In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission's rules.[3] We propose to substitute DTV channel 22 for DTV channel 9 for station KGMB-DT at Honolulu with the following specifications:

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Honolulu, Hawaii	22	40	666

4. Accordingly, we seek comments on the proposed amendment of the DTV Table of

[1] 47 C.F.R. § 73.625(a).
[2] HITV's proposed facility is 11.1 kilometers from the Commission's monitoring station at Waipahu, Hawaii. See 47 C.F.R. § 73.1030(c).
[3] 47 C.F.R. §§ 73.616, 73.623.

Allotments, Section 73.622(i) of the Commission's rules,[4] for the community listed below, to read as follows:

City and State	Channel No. Present	Channel No. Proposed
Honolulu, Hawaii	8, 9, *10, *11, 19, 23, 278, 31, 35, 40, *43	*10, *11, 19, 22, 23, 27, 31, 35, 40, *43

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,[5] 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.[6] 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.

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:

Patrick S. Scott, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802

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

[4] 47 C.F.R. § 73.622(i).

[5] *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).

[6] 47 C.F.R. § 73.623(h)(3).

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.[7] 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 Joyce L. Bernstein, 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 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

[7] See 47 C.F.R. § 1.7.

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,[8] 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

[8] *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 joyce.bernstein@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.