

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

	)	
In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 00-118
Table of Allotments,	)	RM-9757
Digital Television Broadcast Stations.	)	
(Lexington, Kentucky)	)	
	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: June 26, 2000**

**Released: June 29, 2000**

Comment Date: August 21, 2000  
Reply Comment Date: September 5, 2000

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by WKYT Licensee Corporation ("petitioner"), licensee of station WKYT-TV, NTSC Channel 27, Lexington, Kentucky. WKYT requests the substitution of DTV Channel 13 for its assigned DTV Channel 59 at Lexington.<sup>1</sup>

2. In support of its proposal, petitioner states that the adoption of its in-core spectrum digital allotment would permit it to construct only one set of digital transmission facilities. Petitioner notes that the Commission has expressed its concerns regarding the additional burden placed on licensees with out-of-core DTV allotments. Thus, the Commission, states the petitioner, promises that to the extent that in-core channels are available during the transition, efforts would be made to further reduce the number of out-of-core allotments to the Table of Allotments for DTV. [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 (1998).] Petitioner maintains that adoption of its proposal would reduce the construction costs that it will incur during the DTV transition and these savings could be used to maintain and improve other aspects of its services.

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<sup>1</sup> Although petitioner's request indicates that the original copy of its proposal was signed, petitioner failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. Section 1.401(b) of the Commission rules concerning rulemaking proceeding places petitioners on notice that their proposals must conform with the requirements of Section 1.52 regarding subscription and certification. See also Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, n.42 (1990). Petitioner is requested to rectify this omission in its comments.

3. We believe petitioner's proposal warrants consideration. DTV Channel 13 can be substituted for DTV Channel 59 at Lexington, Kentucky, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (38-02-23 N. and 84-24-10 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 13 for DTV 59 Channel for station WKYT-TV at Lexington with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
KY Lexington	13	5.0	300

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>
Lexington, Kentucky	22, 40, *42, 59	13, 22, 40, *42,

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 August 21, 2000, and reply comments on or before September 5, 2000, 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:

Robert A. Beizer, Secretary  
 WKYT Licensee Corporation  
 1201 New York Avenue, NW  
 Suite 1000  
 Washington, DC 20005-3917  
 (Petitioner)

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.