

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

In the Matter of)	
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)	
Amendment of Section 73.622(b),)	MM Docket No. 00-162
Table of Allotments,)	RM-9948
Digital Television Broadcast Stations.)	
(Fresno, California))	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 7, 2000

Released: September 8, 2000

Comment Date: October 30, 2000
Reply Comment Date: November 14, 2000

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Fisher Broadcasting-Fresno, L.L.C. ("Fisher"), licensee of station KJEO(TV), NTSC Channel 47, Fresno, California. Fisher requests the substitution of DTV Channel 34 for station KJEO(TV)'s assigned DTV Channel 14.

2. Fisher states that the substitution of DTV Channel 34 is necessary to avoid the possibility of unintentional interference to land mobile operations that may occur if KJEO-DT were to optimize its transmitting facilities on Channel 14. Fisher states that because DTV Channel 14 is located just above a band of frequencies utilized primarily for land-mobile operations this poses a problem for DTV operations. Fisher asserts that the characteristics of the 8-VSB DTV spectrum is such that energy is transmitted much closer to the channel edges of the allotted channel than the NTSC transmissions. Fisher believes that the additional energy contributed by optimizing KJEO's DTV facilities on Channel 14 would likely cause interference to adjacent land mobile frequencies. Fisher concludes, the allotment of DTV Channel 34 is necessary in order to prevent this kind of interference.

3. We believe petitioner's proposal warrants consideration. DTV Channel 34 can be substituted for DTV Channel 14 at Fresno, California, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (37-04-14 N. and 119-25-31 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 34 for DTV Channel 14 for station KJEO-TV at Fresno with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
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CA Fresno	34	330	597
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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>
Fresno, California	7, 9, 14, 16, *40	7, 9, 16, 34, *40

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 October 30, 2000, and reply comments on or before November 14, 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:

Clifford M. Harrington
 Brendan Holland
 Shaw Pittman
 2001 Pennsylvania Avenue, NW
 Suite 400
 Washington, DC 20006
 (Counsel for Fisher Broadcasting-Fresno, L.L.C.)

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.