

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

In the Matter of)
)
Amendment of Section 73.606(b),)
TV Table of Allotments,) MM Docket No. 01-148
TV Broadcast Stations.) RM-10141
(Campbellsville and Bardstown, Kentucky))

NOTICE OF PROPOSED RULE MAKING

Adopted: June 27, 2001

Released: July 6, 2001

Comment Date: August 27, 2001

Reply Comment Date: September 11, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rulemaking filed by Louisville Communications, LLC ("petitioner"), requesting the reallocation of Television Channel 34 and DTV Channel 19 from Campbellsville to Bardstown, Kentucky. Bardstown has no television stations or vacant allotments.

2. Petitioner filed its petition pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other parties the opportunity to file competing expressions of interest. In order to determine whether the proposal before us will result in a preferential arrangement of allotments, we will be guided by the television allotment priorities in the Television Sixth Report and Order.

3. In support of its petition for rulemaking, petitioner states that the community of Bardstown, Kentucky is a community for allotment purposes and deserves the allotment. Petitioner alleges that the reallocation would not deprive Campbellsville of its sole local transmission station because Station W04BP is a Class A eligible LPTV station licensed to Campbellsville University. Citing the Commission's

1 See Report and Order in MM Docket No. 88-526, 4 FCC Rcd 4870 (1989), recon granted in part, 5 FCC Rcd 7094 (1990).

2 These priorities are: 1) To provide at least one television service to all parts of the United States. 2) To provide each community with at least one television broadcast station. 3) To provide a choice of at least two television services to all parts of the United States. 4) To provide each community with at least two television broadcast stations. 5) Any channels which remain unassigned under the foregoing priorities will be assigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities. See Sixth Report and Order in Docket Nos. 8736, 8975, 9175 and 8976, 41 FCC 148, 167 (1952)

decision in *Ardmore, Oklahoma and Sherman, Texas*,³ it argues that its proposal should be considered because its proposal is mutually exclusive with its current operation, it proposes no change of transmitter site and therefore no loss of reception service, will provide Bardstown with its first local transmission service, and will continue to serve the community of Campbellsville with a city grade signal. With respect to the reallocation of DTV Channel 19, petitioner notes that the station is unbuilt and therefore would not constitute the removal of an existing service.

4. As an initial matter, we note that petitioner's claims notwithstanding, we consider this to be a proposed removal of a sole local service. Any contemplated upgrade by Station W04BP to Class A is speculative, and we do not consider LPTV stations to be fulltime transmission services for allotment purposes. However, although this proposal would remove Campbellsville's sole local television service and we are reluctant to remove a community's sole local service,⁴ we will seek comment on this proposal in order to determine whether this proposal could promote the public interest. Petitioner must show that the community of Bardstown is more deserving of the station than Campbellsville. We believe that the proposal warrants our consideration because it would provide the community of Bardstown with its first local television service and involves no change of site and thus no actual loss of service. Channel 34 can be reallocated from Campbellsville to Bardstown at petitioner's licensed site.⁵ However, petitioner proposes to change site for DTV Channel 19. DTV Channel 19 can be allotted at Bardstown at petitioner's requested site 25.6 kilometers (15.9 miles) northeast of the community.⁶ Therefore, we seek comment on whether the reallocation of DTV Channel 19 would result in a preferential arrangement of allotments.

5. We also note that petitioner's proposed site for DTV Channel 19 will provide a city-grade signal to 71% of the Lexington-Fayette Urbanized Area and 100% of the Louisville Urbanized Area. Petitioner states that its proposed site for DTV Channel 19 is the same as its site specified in application, File No. 19991101AKV, but our analysis shows that the site specified in the rulemaking petition is 50 kilometers away from the application site. Petitioner is to explain this discrepancy in its comments. Petitioner is also to include in its comments a public interest justification for the reallocation of DTV Channel 19 from the community of Campbellsville to the community of Bardstown and the Louisville Urbanized Area. Petitioner is to use the analysis set forth in our decisions in *Huntington Broadcasting Co. v. FCC*⁷ and *Faye and Richard Tuck, Inc.*⁸

6. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

³ See *Report and Order* in MM Docket No. 91-342, 7 FCC Rcd 4846 (1992).

⁴ See *Report and Order* in MM Docket 89-87 (Bessemer and Tuscaloosa, Alabama), 5 FCC Rcd 669 (1990), app. For rev. 11 FCC Rcd 11585 (1996).

⁵ The coordinates for TV Channel 34 at Bardstown are 37-31-51 NL and 85-26-45 WL.

⁶ The coordinates for DTV Channel 19 at Bardstown are 37-56-54 NL and 84-14-4 WL.

⁷ 192 F.2d 33 (D.C.Cir. 1951).

⁸ 3 FCC Rcd 5374 (1988).

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Campbellsville, Kentucky	34	--
Bardstown, Kentucky	--	34

7. Accordingly, we also 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>
Campbellsville, Kentucky	19	--
Bardstown, Kentucky	--	19

8. 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.

9. Interested parties may file comments on or before August 27, 2001, and reply comments on or before September 11, 2001, 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:

Mark N. Lipp
 Tamara Y. Brown
 Shook, Hardy and Bacon
 600 14th Street, NW, Suite 800
 Washington, DC 20005
 (counsel to petitioner)

10. 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 and DTV Tables of Allotments, Sections 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.

11. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180. 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

John A. Karousos
Chief, Allocations Branch
Policy and Rules 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 TV Table of Allotments, Section 73.606(b) and 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 Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.