

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

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-83
Table of Allotments,)	RM-10085
Digital Television Broadcast Stations.)	
(Lexington, Kentucky))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 24, 2001

Released: July 27, 2001

By the Chief, Video Services Division:

1. At the request of WLEX Communications, LLC ("WLEX"), licensee of station WLEX-TV, NTSC channel 18, Lexington, Kentucky, the Commission has before it the Notice of Proposed Rule Making, 66 FR 20620, April 24, 2001, proposing the substitution of DTV channel 39 for station WLEX-TV's assigned DTV channel 22. WLEX and Paxson Lexington License, Inc. filed comments.¹ WDKY License, LLC ("WDKY"), licensee of station WDKY-TV, Danville, Kentucky, filed comments and a counterproposal.² WLEX filed reply comments.³

2. We believe the public interest would be served by substitution of DTV channel 39 for DTV channel 22 since it would reduce WLEX's build-out costs while eliminating the mutual exclusivity between WLEX-TV and WAOM-TV digital applications. DTV channel 39 can be allotted to Lexington, Kentucky, in compliance with the principle community requirements of Section 73.625(a) at coordinates (38-02-03 N. and 84-23-39 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for

¹ Paxson is the licensee of station WAOM(TV), DTV channel 21, Morehead Kentucky. Paxson states that the digital facilities of WLEX-DT on channel 22 is predicted to cause impermissible interference to WAOM-DT and precludes the grant of WAOM-DT's application for digital facilities. Paxson states that the grant of WLEX's proposal would resolve the apparent conflict between WLEX-DT's and WAOM-DT's pending DTV construction permit applications.

² WDKY's counterproposal was found to unacceptable for consideration and was not place on public notice. WDKY's request to substitute DTV channel 22 for station WDKY-TV's assigned DTV channel 4 at Danville does not fall within the scope of this proceeding's *Notice*. This is no mutual exclusivity between the allotment of DTV channel 39 at Lexington and WDKY's request to substitute DTV channel 22 for DTV channel 4 at Danville. Furthermore, our engineering analysis indicates that WDKY's proposal is also technically unacceptable because its would create interference to the pending application (BPCDT-19991020ACE) for station WAOM-DT at Morehead, Kentucky.

³ After the record closed WDKY filed an unauthorized pleading. The Commission's Rules do not contemplate the filing of pleadings beyond the comment periods set forth in the *Notice*. Moreover, we find that the additional comments do not provide information of decisional significance and therefore will not be considered.

modification of initial DTV allotments under Section 73.623(c)(2) for Station WLEX-TV with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
KY Lexington	39	1000	288	814

3. Accordingly, pursuant to the authority contained 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 ORDERED, That effective September 10, 2001, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Lexington, Kentucky	39, 40, *42, 59

4. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, WLEX Communications, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 39 in lieu of DTV Channel 22 for station WLEX-TV.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau