

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

	)	
In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 01-166
Table of Allotments,	)	RM-10182
Digital Television Broadcast Stations.	)	
(Calumet, Michigan)	)	
	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: July 26, 2001**

**Released: July 31, 2001**

Comment Date: September 21, 2001  
Reply Comment Date: October 9, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Scanlan Television, Inc. ("Scanlan"), licensee of station WBKP-TV, NTSC Channel 5, Calumet, Michigan. Scanlan requests the substitution of DTV Channel 11 for station WBKP-TV's assigned DTV Channel 18.<sup>1</sup>

2. In support of its proposal, Scanlan states that adoption of its channel and location change will permit Station WBKP-TV to nearly replicate the service areas of both WBKP-TV and also WBUP(TV). Secondly, the use of DTV channel 11 would make it easier for current WBKP-TV viewers to locate the DTV operation. Finally, Scanlan claims that adoption of its proposal will allow for a substantially less transmitter power and smaller antenna to service approximately the same coverage area as a comparable UHF DTV facility. Scanlan believes this would reduce the initial capital investment as well as overhead costs, thus allowing additional resources to be available for DTV programming.

3. We believe petitioner's proposal warrants consideration. DTV Channel 11 can be substituted for DTV Channel 18 at Calumet, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (46-26-17 N. and 88-02-58 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

<sup>1</sup> Scanlan states that it filed a petition for rule making on March 2, 1999, requesting the substitution of DTV 39 for station WBKP-TV's assigned DTV 18 at Calumet which was coordinated with Canada. However, Scanlan submits that the Canadian government objected to its proposal to change site and channel. Thereby, Scanlan requests withdrawal of its original petition for rule making. Base on our issuance of this *Notice*, Scanlan's request for withdrawal is granted.

73.623(c)(2). However, since the community of Calumet is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to substitute DTV Channel 11 for DTV 18 Channel for station WBKP-TV at Calumet with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
MI Calumet	11	96.2	388

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>
Calumet, Michigan	18	11

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 September 21, 2001, and reply comments on or before October 9, 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:

Kevin C. Boyle  
 Latham & Watkins  
 555 Eleventh Street  
 Suite 1000  
 Washington, DC 20004  
 (Counsel for Scanlan Television, Inc.)

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.