

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

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In the Matter of)	
)	
Amendment of Section 73.606(b),)	MM Docket No. 01-2
Table of Allotments,)	RM-10036
Television Broadcast Stations.)	
(New Iberia, Louisiana))	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 8, 2001

Released: January 9, 2001

Comment Date: March 2, 2001
Reply Comment Date: March 19, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Iberia Communications, L.L.C. ("Iberia"), an applicant for a construction permit for a new television station to operate on channel 36 at New Iberia, Louisiana.¹ Iberia requests the substitution of channel 53 to channel 36 at New Iberia, Louisiana.

2. Iberia states that its proposal represents another step in the long effort to bring a first local TV transmission service to the community of New Iberia. Iberia notes that it had filed an application for construction permit on June 12, 1996, prior to the September 20, 1996, cut-off date for filing applications for new NTSC facilities. Iberia states that since New Iberia is located near New Orleans, Louisiana, and was within the zone subject to a "freeze" on the filing of applications for new NTSC television stations, it sought a waiver of the Freeze Order.² Iberia submits that the DTV Table of Allotments ultimately adopted accommodated the use of channel 36 for a new NTSC station at New Iberia. Subsequently, however, Iberia states, the licensee of station WWL-DT, New Orleans, Louisiana, filed a petition for rule making proposing the substitution of DTV channel 36 for station

¹ Iberia is an applicant for vacant NTSC TV channel 36, allotted to New Iberia, Louisiana, (file number BPCT-960612KF). Iberia states that its application is mutually exclusive with an application filed by New Iberia 36, L.L.C. (file number BPCT-960920YI), also specifying the vacant New Iberia NTSC TV channel 36. However, Iberia states that it has reached a settlement agreement with Iberia 36 which removes the mutually exclusive situation with Iberia being the surviving applicant.

² See Order, *Advanced Television Systems on and Their Impact the Existing Broadcast Service*, 52 Fed. Reg. 28346, July 29, 1987.

WWL-DT's assigned DTV channel 30.³ Iberia contends that its pending application for channel 36 causes interference to WWL-DT's service area which exceeds the current FCC restrictions on NTSC interference to DTV stations. Iberia states that alternate sites and other possible technical changes were explored to determine if the channel 36 facility could be suitably modified to avoid causing interference to any DTV stations and meet the NTSC spacing criteria. Iberia contends that it determined that no modification to the channel 36 proposal could eliminate all the technical concerns and provide the required signal coverage to New Iberia. Consequently, Iberia proposes a channel change in order to eliminate the interference problems associated with channel 36 at New Iberia.

3. Iberia seeks to invoke the provisions outlined in the Commission's Public Notice (*Public Notice*) released on November 22, 1999, DA 99-2605. In that *Public Notice* the Commission announced a window filing opportunity to file amendments to certain pending applications for new full-service NTSC television stations on channel 2-59 at locations inside of the "TV Freeze Area".⁴ The purpose of the window was to provide an opportunity for applicants with so-called "freeze waiver" applications to amend those applications, if possible, or to file a petition for rule making seeking a channel substitution to eliminate a technical conflict with a digital television (DTV) station(s). Additionally, the Commission stated that new or amended rule making petitions submitted during the window period would be subject to our normal notice and comment procedures. However, since the *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968 (1996), proscribed the filing of new proposals for additional NTSC channel allotments, new parties may not file counterproposals for a new NTSC allotment in the same or nearby communities.⁵ Thus, the opportunity for filing counterproposals in this proceeding is limited to those parties with existing petitions and applications that are the subject of the announced filing window.

4. We believe Iberia's proposal warrants consideration since the channel substitution would allow a first local TV service to be implemented at New Iberia. A staff engineering analysis indicates that Channel 53 can be allotted to New Iberia consistent with the criteria set forth in the Commission's *Public Notice* for evaluating requests for NTSC channel changes.⁶ The coordinates for Channel 53 with a minus offset⁷ are North Latitude 30-12-48 and West Longitude

³ The Commission issued a *Notice of Proposed Rule Making* in MM Docket No. 00-188, 15 FCC Rcd 60163 (2000), proposing the substitution of DTV channel 36 for station WWL-TV's assigned DTV channel 30 at New Orleans, Louisiana.

⁴ The window was opened on November 22, 1999 and the original closing date was March 17, 2000, but subsequently was extended to July 17, 2000.

⁵ See *Advanced Television System and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

⁶ In the *Public Notice* the Commission stated that petitions to change the channel of an existing allotment must protect DTV stations as provided in Section 73.623(c), but without any allowance to create *de minimis* interference as defined in Section 73.623(c)(2).

⁷ "A station with a 'plus' or 'minus' offset is required to operate with its carrier frequency 10 kHz above or below

91-45-58. Pursuant to the Commission's policy as noted in its Public Notice, we will not accept competing expressions of interest in the use of television channel 53- at New Iberia.

5. 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:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
New Iberia, Louisiana	36-	53-

6. 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.

7. Interested parties may file comments on or before March 2, 2001, and reply comments on or before March 19, 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:

Howard M. Weiss
 Anne Goodwin Crump
 Fletcher, Heald & Hildreth, P.L.C.
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 Eleventh Floor
 Arlington, Virginia 22209
 (Counsel for Iberia Communications, L.L.C.)

8. 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). 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.

9. 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,

the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin, 3 FCC Rcd 6765 n. 1 (1988)*.

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.