

**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. 01-323
Television Broadcast Stations.)	RM-10337
(Vernal and Santaquin, Utah,)	
Ely and Caliente, Nevada))	

NOTICE OF PROPOSED RULEMAKING

Adopted: November 14, 2001

Released: November 23, 2001

Comment Date: January 14, 2002

Reply Comment Date: January 29, 2002

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rulemaking jointly filed by TV 6, L.L.C., permittee of VHF TV Station KBCJ, Channel 6, Vernal, Utah, and by Kaleidoscope Foundation, Inc., permittee of VHF TV Station KBNY, Channel 6, Ely, Nevada ("Petitioners"). They propose reallocation of NTSC television Channel 6 from Vernal to Santaquin, Utah and NTSC television Channel 6 from Ely to Caliente, Nevada and modification of the construction permits at Vernal (BPCT-960919KG) and at Ely (BPET-970331LN) to specify Santaquin and Caliente, respectively.

2. Petitioner filed its rulemaking request under the provisions of Section 1.420(i) of the Commission's Rules that permit modification of a station authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). We evaluate television petitions for a change in community pursuant to the television allotment priorities set forth in the *Sixth Report and Order on Television Allocations*, 41 FCC 148 (1952).¹

¹ The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. 41 FCC at 167.

3. In support of their proposal, Petitioners assert that its grant would provide the communities of Santaquin and Caliente with their first local television services and also provide first television service to substantial unserved and underserved areas. Petitioners note that because the proposed reallocation of NTSC Channel 6 to Santaquin is dependent on the proposal to reallocate NTSC Channel 6 to Caliente, they have coordinated their joint filing and assure the Commission that the movement of the Ely station to Caliente will take place so that the movement of the Vernal station to Santaquin will not be delayed. Petitioners note that reallocation of NTSC Channel 6 at Vernal and at Ely will deprive neither community of an existing local transmission service because respective Stations KBCJ-TV and KBNY-TV remain unbuilt, citing *Farmington and Gallup, New Mexico*, 11 FCC Rcd 2357, 2360 (1996). Therefore, the Petitioners note that the prohibition against removal of the sole local transmission service under *Change of Community R&O, supra*, would not be violated in Vernal nor in Ely.

4. *Santaquin Reallocation.* Petitioners also contend that relocation of Vernal's allotment to Santaquin is permissible as Santaquin satisfies the definition of a community for allotment purposes because it is listed in the 1990 U.S. Census with population of 2386 persons and has other indicia denoting a community for allotment purposes. Among those indicia are a mayor/city council form of government with a city manager; its own zip code, police and fire departments, a library, an elementary school, medical clinics, churches and its own natural gas company. Petitioners attach a technical narrative that purports to show that the proposed Santaquin reallocation satisfies the minimum interstation distance separation requirements for NTSC allotments and for DTV allotments. In addition, they show that reallocation of Channel 6 to Santaquin is mutually exclusive with Channel 6 at Vernal, which has a 1990 population of 6644 persons.

5. Furthermore, Petitioners contend that the proposed reallocation of Channel 6 to Santaquin will provide a first television service to an area that currently receives no television service ("white area") and to an area that currently receives only one television service ("gray area"). Petitioners also contend that the deletion of the allotment at Vernal will result in potential white area and gray area losses, noting that the station at Vernal has not been constructed. They also contend that the reallocation to Santaquin would result in a net Grade B gain and a net Grade B service loss at Vernal. Vernal will not be left without transmission service, once construction of Station KBJN-TV, NTSC Channel *17, is completed (BPET-960705KJ). Santaquin is not located within an urbanized area nor would the principal city contour of the relocated station cover more than 50% of any urbanized area. Petitioners argue that the proposed reallocation of Vernal to Santaquin would satisfy Priority 1 of the Commission's television allotment priorities as it would provide white area service and also Priority 2 because Santaquin would be provided with its first local television service.

6. According to a staff engineering study the proposed reallocation from Vernal to Santaquin (using Petitioners' proposed facilities of 100 kilowatts and 305 meters) would provide for a first service to a white area of 4033 square kilometers, which currently receives no television service and is populated by 9501 persons.² That reallocation would provide for a second service to a 7195 square kilometer gray area with 37,041 persons, which now receives only one service. The study also reveals that the proposed reallocation from Vernal would remove the only television service to 18,345 persons, leaving a white loss area of 8810 square kilometers, and would remove

² All population estimates are based on the 1990 U.S. Census.

the second service to 24,405 persons, leaving a gray loss area of 30,830 square kilometers.³ Overall, considering the difference between the population that potentially would be served by Station KBCJ-TV at Vernal and that served by the station as relocated to Santaquin, the Santaquin proposal would result in a net coverage gain of 660,561 persons despite a net loss of 19,158 square kilometers in coverage area. The proposal would provide 100% coverage of Santaquin with a city-grade signal (74 dBu) and no part of any urbanized area.

7. *Caliente Reallotment.* As to Ely's reallotment to Caliente, Petitioners note that it is also a community for allotment purposes. Caliente is listed in the 1990 Census with a population of 1111 and has a mayor/city council and a city manager, its own zip code, fire protection, hospital, and a branch of the Lincoln County Library. It also has an elementary school, a high school, and a community college. Petitioners also state that Caliente is home to dozens of businesses including several hotels, motels, a golf course, and others. Caliente is not located within an urbanized area nor would the principal city contour of a station located there cover more than 50% of any urbanized area. Petitioners note that the Caliente reallotment would provide for a new service to a white area and a new second service to a gray area. While Ely with a 1990 population of 4756 persons would be left without a transmission service, no mention is made of any potential white or Grade B service loss for the Ely service area. However, that area would suffer a potential gray area loss, state Petitioners, noting that the facility has yet to be constructed. However, they contend that the Caliente reallotment would result in a net service gain. Petitioners argue that reallotment of Channel 6 from Ely to Caliente, upon which the latter proposal depends, would also satisfy Priority 1 because it would serve a white area. They also note that reallotment to Caliente would satisfy Priority 2 and Priority 3 because it would provide gray area service as well as a first local television service to Caliente.

8. For the Caliente reallotment, a staff study estimated that relocating the Ely station to Caliente (using proposed facilities of 100 kilowatts and 300 meters) would provide service to a white area of 16,970 square kilometers, which currently receives no television service and is populated by 2771 persons. The Caliente reallotment would provide for a second service to a 12,320 square kilometer gray area with 3467 persons.⁴ The study also reveals that the proposed reallotment from Ely would remove the only television service to 1591 persons, leaving a white loss area of 19,230 square kilometers, and the second service, leaving a gray loss area of 9776 square kilometers with 8813 persons. This is the extent of the loss area. Overall, the Caliente proposal would result in a net coverage loss of 2021 persons in a net gain area of 1647 square kilometers, considering the difference between the population that would be served potentially by Station KBNY-TV at Ely and that served by the station as relocated to Caliente. The proposal would provide 100% coverage of Caliente with a city-grade signal and no part of any urbanized area.

³ The staff study also estimated that the gain area of the proposed station in Santaquin as relocated from Vernal would provide new service to 1922 persons in a 564 km² area that now receives 2 TV services; 3688 persons in an 1841 km² area now receiving 3 TV services; and 476 persons in a 207 km² area now receiving 4 TV services. The loss area also was estimated to include 2655 persons in a 2629 km² area that would receive 2 services; 185 persons in a 2149 km² area to receive 3 services; and 86 persons in a 3743 km² area to receive 4 services.

⁴ In addition, the staff study estimated that the gain area of the Caliente proposal as relocated from Ely would provide new service to 754 persons in an 856 km² area that now receives 2 TV services; 1340 persons in a 174 km² area now receiving 3 TV services; and to an unpopulated 298 km² area now receiving 4 TV services.

9. Petitioners believe that the white area gain from the two combined proposals is significant. Additionally, they point out that the proposal would result in a net gray area gain as well as a net Grade B area gain. Petitioners state their intention, should the reallocations be granted, to apply to construct and operate the respective stations upon grant of the applications.

10. We believe the public interest would be served by soliciting comments on the petitioners' proposals to reallocate NTSC Channel 6 from Vernal to Santaquin, Utah at coordinates North Latitude 39-43-58 and West Longitude 111-56-34; and NTSC Channel 6 from Ely to Caliente, Nevada at NL 37-47-00 and WL 114-30-00. The proposals, if granted, would provide Santaquin with its first local television service, as well as Caliente with its first local service. We note that Petitioners' proposal would remove an unbuilt construction permit representing the sole local television service at Ely with a population more than four times as great as that of Caliente. Therefore, we specifically solicit comment on the public interest value of the proposed Caliente reallocation.

11. Accordingly, we seek comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u> ⁵
Vernal, Utah	6, *17+	*17+
Santaquin, Utah	--	6
Ely, Nevada	6+	--
Caliente, Nevada	--	6+

11. The Commission's authority to institute rulemaking 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.

12. Interested parties may file comments on or before January 14, 2002, and reply comments on or before January 29, 2002, and are advised to read the Appendix for proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W.; TW-A325, Washington, DC 20554. Additionally, a copy of such comments should be served on petitioner's counsel, as follows:

⁵ The zero offset for NTSC Channel 6 at Santaquin and the +10 kHz offset for NTSC Channel 6 at Caliente result from separate analyses at the proposed new transmitter sites.

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13. 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 FM Table of Allotments, Section 73.202(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.

14. For further information concerning this proceeding, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rulemaking 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 that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that 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 FM Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* 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. 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 Rulemaking* 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 (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.