

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

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In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-41
Table of Allotments,)	RM-10058
Digital Television Broadcast Stations.)	
(Merced, California))	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 13, 2001

Released: February 14, 2001

Comment Date: April 9, 2001
Reply Comment Date: April 24, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Sainte 51, L.P. ("Sainte"), permittee of station KNSO(TV), NTSC channel 51, Merced, California. Sainte requests the substitution of DTV channel 5 for station KNSO(TV)'s assigned DTV channel 38.

2. Sainte states that station KNSO(TV) is included in the Fresno-Visalia television market and from its current location the station is incapable of providing adequate coverage to the entire Fresno-Visalia DMA. Sainte claims that due to distance and intervening terrain, the current predicted Grade B contour of KNSO(TV) does not cover either Fresno or Visalia, the two named cities in the market. Sainte notes that the mountainous terrain in the area is such that it creates shadowing over the communities of Visalia and Porterville. Because of these serious technical difficulties, Sainte asserts that station KNSO(TV) operates at a severe disadvantage, and, as a result, it is not able to compete effectively in the market due to its limited service area. However, Sainte claims that its proposal to change its site to Meadow Lakes, California, and substitute DTV channels will permit the station to provide city grade coverage to Merced and the remainder of the market. Sainte states that the adoption of its proposal will greatly increase the station's service area and increase the station's ability to compete in the market. Moreover, the proposed relocation of the station will place KNSO(TV) at a share antenna site, with attendant environmental benefits.

3. We believe petitioner's proposal warrants consideration. DTV Channel 5 can be substituted for DTV Channel 38 at Merced, California, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (37-04-18 N. and 119-25-53 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

73.623(c)(2). We propose to substitute DTV Channel 5 for DTV Channel 38 for station KNSO(TV) at Merced with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
CA Merced	5	12.9	756

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>
Merced, California	38	5

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 April 9, 2001, and reply comments on or before April 24, 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:

Anne Goodwin Crump
 Fletcher, Heald, Hildreth, P.L.C.
 11th Floor
 1300 North 17th Street
 Arlington, Virginia 22209-3801
 (Counsel for Sainte 51, L.P.)

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.