

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

In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 00-117
Table of Allotments,	)	RM-9810
Digital Television Broadcast Stations.	)	
(Salem, Oregon)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: February 1, 2002**

**Released: February 6, 2002**

By the Chief, Video Services Division:

1. At the request of Paxson Salem License, Inc. ("Paxson"), licensee of station KPXG(TV), NTSC channel 22, Salem, Oregon, the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 11362 (2000), proposing the substitution of DTV channel 4 for its assigned DTV channel 20. Paxson filed comments restating its intention to construct and operate station KPXG-DT on channel 4. ACME Television Licenses of Oregon, LLC ("ACME"), licensee of KWBP(TV), Salem, Oregon, and licensee of low power television station KWBP-LP, channel 4, Reedville, Oregon, filed comments in opposition. Paxson filed responsive comments.

2. ACME states that the Paxson proposal fails to provide a 55 dBu city grade field strength contour over all of Salem, Oregon, and fails to replicate the existing NTSC service area of KPXG(TV). ACME also claims that adoption of the Paxson proposal would displace the service of KWBP-LP located in Reedville, Oregon. It notes that Paxson proposes to change site and moved toward KWBP-LP, which is only 12.4 kilometers from the DTV site specified in Paxson's proposal. ACME states that its low power station provides WB Network, syndicated and local programming to persons residing in the City of Portland, Oregon, and the surrounding area, who are unable to satisfactorily receive that programming over the air from KWBP(TV). ACME submits that it acquired KWBP-LP based on the Commission's original formulation of the DTV Table of Allotments, which preserved the service provided by KWBP-LP. ACME claims it invested considerable resources, in excess of \$250,000, in improving KWBP-LP's service to the public. It also argues that Paxson has failed to explain how the public interest will be served by the loss of service currently provided by both KPXG(TV) and KWBP-LP. Finally, ACME suggests that if the Commission considers Paxson's proposal, its adoption ought to be conditioned on location and assignment of a equivalent replacement channel for KWBP-LP and reimbursement by Paxson to ACME of all the associated costs resulting from the modification of KWBP-LP.

3. In response, Paxson states that its proposal would permit KPXG-DT to improve over-the-air DTV service by permitting its station to co-locate with KOIN-TV, a move that is precluded by the use DTV channel 20. Paxson argues that the other digital station allotted to Salem, ACME's KWBP-

DT, is not precluded and similarly has applied to relocate to the KOIN-TV tower.<sup>1</sup> Paxson notes that in its petition it claimed that the grant of its channel change would result in no net loss of lower power stations. KPXG-DT's proposed allotment, according to Paxson, would displace ACME's recently acquired low power station (KWBP-LP), but KPXG-DT's initial allotment on channel 20 would displace K20DD located at Albany, Oregon. To this end, it states that whether or not the Commission grants its proposal, one secondary station will be displaced, either KWBP-LP or K20DD, a result the Commission approved when it initially allotting channel 20 to KPXG-DT. Further, Paxson maintains that the Commission when implementing digital television, has "explicitly, continuously, and notoriously affirmed the secondary status of LPTV and TV translator stations."<sup>2</sup> Nevertheless, Paxson argues, that the Commission adopted numerous mitigating administrative and technical measures designed to create additional vacancies to which displaced stations could relocate, noting that ACME has not avail itself of such a remedy.<sup>3</sup> It also refutes ACME's claim that the Commission should condition Paxson's grant upon AMCE finding a replacement channel as well as, reimbursement for the associated costs. It states that AMCE has failed to cite any authority for the imposition of such a burden on Paxson, arguing that the Commission has explicitly addressed the issue of reimbursement, stating it that was not "appropriate to require broadcaster to implement DTV and at the same time require them to compensate secondary low power stations that are affected by this required implementation." Finally, Paxson disputes ACME's claim that its proposed channel change will not satisfy the Commission's principal community coverage requirement. Paxson states that its technical study shows that 55 dBu service is provided to all of KPXG-DT's community of license. And, the proposed operation of KPXG-DT on channel 4 would provide better replication than the proposed facilities of KWBP-DT, which would be located at the same site. Paxson finally argues that the adoption of its proposal will serve the public interest and result in a more efficient use of the broadcast spectrum.

4. We believe the public interest would be served by adopting Paxson's proposal since it would permit station KPXG(TV) to co-locate its digital facility with station KOIN-TV as the Commission has encouraged DTV applicants to do for a variety of reasons. Moreover, we find that ACME has not raised an reason for denying Paxson's request. In essence, ACME raises the same concerns that were addressed in the Commission's *Sixth Report and Order and Review of the Commission's Rules and Policies Affecting the Conversion Digital Television ("DTV Biennial Review") Report and Order and Further Notice of Proposed Rule Making*<sup>4</sup>. There, the Commission decided that it will not require replication in order to give broadcasters flexibility to collocate their antennas at common sites in order

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<sup>1</sup> Paxson cites *FCC File No. BPCDT-19981007KE*.

<sup>2</sup> Citing, *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order ("Sixth Report and Order")*, MM Docket No. 87-268, 12 FCC Rcd 14588(1997), *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998), and *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

<sup>3</sup> Paxson also notes that the Commission ruled that KWBP-LP did not qualify for Class A status pursuant to *Public Notice*, DA 00-1227, released June 9, 2000.

<sup>4</sup> See *16 FCC Rcd 5946 (2001)*.

to minimize potential local difficulties in locating towers and eliminating the cost of building new towers. Furthermore, ACME's reliance on 55 dBu city grade coverage requirement is misplaced. The Commission's city grade requirement as set forth in Section 73.625 requires a 28 dBu F(50,90) field strength contour to cover the principle city, for channels between 2-6. In the *Notice of Proposed Rule Making* in MM Docket No. 00-39, the Commission did propose a 55 dBu contour requirement for a station's community of license, however, in the *DTV Biennial Review* the Commission adopted a 35 dBu requirement instead, effective December 31, 2004, for commercial stations and December 31, 2005, for non-commercial stations. Thus, contrary to ACME's claims, Paxson's proposal does provide city grade coverage to the community of Salem and station KWBP-LP is not entitled to any preferential treatment other than what it normally afforded to all secondary services. We find that Paxson's justification for its channel substitution serves the Commission's goal of allowing broadcasters some flexibility so that they may expeditiously continue to build out and met the DTV construction deadlines.

5. DTV channel 4 can be allotted to Salem, Oregon, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (45-30-58 N. and 122-43-59 W.). Since the community Salem is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government has been obtained for this allotment. 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 modification of initial DTV allotments under Section 73.623(c)(2) for Station KPXG-DT with the following specifications:

<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
OR Salem	4	17.0	455	2040

6. 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 March 25, 2002, 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>
Salem, Oregon	4, 33c

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Paxson Salem License, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 4 in lieu of DTV Channel 20 for station KPXG(TV).

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

9. 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