

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

	)	
In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MB Docket No. 04-236
Table of Allotments,	)	RM-11001
Digital Television Broadcast Stations.	)	
(Fresno, California)	)	
	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: June 25, 2004**

**Released: July 2, 2004**

Comment Date: August 23, 2004  
Reply Comment Date: September 7, 2004

By the Chief, Video Division:

1. The Commission has before it a petition for rule making filed by KSEE License, Inc. (“KSEE”), licensee of station KSEE, NTSC channel 24 and DTV channel 16, Fresno, California. KSEE requests the substitution of DTV channel 38 for DTV channel 16 at Fresno.
  
2. KSEE states that it was assigned DTV channel 16 by the Commission in 1998 and, as mandated, proceeded to build transmitting facilities to operate on that channel. KSEE submits that beginning in August 2003, after commencing operation; it was contacted by several land mobile licensees in the San Francisco and Los Angeles markets claiming that their land mobile operations on channel 16 were receiving co-channel interference from station KSEE-DT. Based on research triggered by the complaints, KSEE states that it believes that the problem is due to an inadequate separation between the channels in use and not due to any unauthorized operation by KSEE-DT. In October 2003, KSEE states that it received a complaint from the Los Angeles County Sheriff’s Department about the interference to its land mobile operations in the northernmost portion of Los Angeles County. A check of the separation distance between KSEE-DT and the Los Angeles channel 16 land mobile reference coordinates was made, and the spacing was found to be 352.8 kilometers, or more than 100 kilometers in excess of the 250 kilometers separation requirement called for in Section 73.623(e) of the Rules. KSEE states that due to high elevation of KSEE-DT transmitting site, the 250-kilometer separation distance is insufficient to ensure no interference to co-channel land mobile operations in Northern Los Angeles and in the San Francisco Bay Area. KSEE further notes that the interference problem cannot be resolved by installation of band pass filters, notch filters, or ferrite isolators in the land mobile equipment. KSEE states that it cannot modify its antenna to suppress radiation toward the San Francisco or Los Angeles receive sites without

effectively destroying coverage to the Fresno area. KSEE believes that its existing facilities on DTV channel 16 cannot be modified to eliminate or significantly reduce the interference. In order to resolve the pending interference disputes, KSEE seeks to substitute DTV channel 38 for DTV channel 16 with the same pattern and power as currently used.

3. We believe KSEE's proposal warrants consideration. DTV Channel 38 can be substituted for DTV Channel 16 at Fresno, California, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 37-04-19 N. and 119-25-48 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 38 for DTV Channel 16 for station KSEE-DT at Fresno, California, with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
CA Fresno	38	326	601

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>
Fresno, California	7, 9, 16, 34, *40	7, 9, 34, 38, *40

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 August 23, 2004, and reply comments on or before September 7, 2004, 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:

Tom W. Davidson  
 Akin, Gump, Strauss, Hauer & Feld, LLP  
 1333 New Hampshire Avenue, N.W.  
 Washington, D.C. 20036

(Counsel for KSEE License, 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, 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 Division  
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.). The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal

Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of 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.