

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

In the Matter of)	
)	
Amendment of Section 73.622(i),)	MB Docket No. 10-49
Post-Transition Table of DTV Allotments,)	RM-11593
Television Broadcast Stations.)	
(Beaumont, Texas))	

NOTICE OF PROPOSED RULEMAKING

Adopted: February 23, 2010

Released: February 24, 2010

Comment Date: [15 days after date of publication in the Federal Register]

Reply Comment Date: [25 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a petition for rulemaking filed by Freedom Broadcasting of Texas (“Freedom Broadcasting”), the licensee of KFDM(TV), channel 21, Beaumont, Texas. Freedom Broadcasting requests the substitution of channel 25 for channel 21 at Beaumont.

2. Freedom Broadcasting asserts that following the June 12, 2009 digital transition, viewers situated in an area to the east of the KFDM(TV) tower site, who formerly received a strong analog signal, could not receive KFDM(TV)’s digital signal.¹ To alleviate its service difficulties, Freedom Broadcasting asserts that its “goal is to maximize the facilities of KFDM(TV),” however, “because of the need to protect first adjacent channel station KLTL-TV [at Lake Charles, Louisiana], station KFDM(TV) is not able to fully maximize its coverage on channel 21.”² Freedom Broadcasting states that its own further analysis of the station’s service difficulties, “in conjunction with its consulting engineers and antenna manufacturer, indicates that these problems will persist even at the fully authorized ERP of 350 kw so long as the station remains on channel 21.”³ Freedom Broadcasting, therefore, has concluded that by changing to channel 25, KFDM(TV) “will no longer be required to directionalize its signal to protect KLTL-TV, and will be able to use an omni-directional antenna mounted on top of its tower, which should once again provide a good quality signal throughout its service area, including the western portion.”⁴ Finally, Freedom Broadcasting asserts the substitution of channel 25 for channel 21 at Beaumont will serve the public interest by enabling station KFDM(TV) to serve an additional “121,000 persons as compared to the currently authorized 350 kw directional facility” and “to provide service to a number of viewers who received KFDM(TV) analog service, but

¹ *Freedom Broadcasting Petition for Rulemaking* at 3.

² *Id.* at 2

³ *Id.* at 3

⁴ *Id.* at 3-4.

lost service when the station transitioned to digital operations.”⁵

3. Channel 25 can be substituted for channel 21 at Beaumont, Texas as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission’s rules,⁶ at 30-08-24 N. and 93-58-44 W. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616, 73.622(f) and 73.623 of the Commission’s rules.⁷

4. We propose to substitute channel 21 for channel 25 for station KFDM(TV) at Beaumont, Texas with the following specifications:

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Beaumont, Texas	25	350	274

5. Accordingly, we seek comments on the proposed amendment of the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission’s rules,⁸ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Beaumont, Texas	12, 21, *33	12, 25, *33

6. 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. Pursuant to Section 73.623(h) of the rules, mutually-exclusive applicants will be provided a 90-day period of time, from the date of a public notice identifying mutually-exclusive proposals, to resolve their mutual-exclusivity via engineering amendment or settlement.⁹ If we receive an application on or before the date for filing initial comments in this proceeding, which proposes a facility which is mutually-exclusive with the proposal set forth herein, we will issue a public notice and the parties will have 90 days within which to resolve their mutual-exclusivity. If the parties resolve their mutual-exclusivity, we will complete the rulemaking process by issuing the appropriate order. If the parties are unable to resolve their mutual-exclusivity, we will terminate this proceeding and dismiss the application.

7. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments on or before [15 days after publication in the Federal Register] and reply comments on or before [25 days after publication in the Federal Register], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of

⁵ *Id.* at 4.

⁶ 47 C.F.R. § 73.625(a).

⁷ 47 C.F.R. §§ 73.616, 73.622(f) and 73.623.

⁸ 47 C.F.R. § 73.622(i).

⁹ 47 C.F.R. §73.623(h)(3).

the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John P. Janka, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W.
Washington, D.C. 20005

8. Parties must file an original and four copies of each filing. Filings 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). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.¹⁰ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rulemaking proceeding to amend the Post-Transition Table of DTV Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

10. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, Media Bureau, (202) 418-1600. 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket 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)

¹⁰ See 47 C.F.R. § 1.7.

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

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the Post-Transition Table of DTV Allotments, 47 C.F.R. Section 73.622(i), 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 the 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.) Because the Commission has not yet lifted its freeze on the filing of petitions for rulemaking to establish new DTV channel allotments and for changes in community of license,¹¹ we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rulemaking which conflict with the proposal 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 47 C.F.R. Sections 1.415 and 1.420, 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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an

¹¹ See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810 (MB 2004).

original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. An electronic copy should also be sent to adrienne.denysyk@fcc.gov.

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, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.