

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

DA 96-945

In the Matter of)
)
Amendment of Section 73.606(b),) MM Docket No. 96-134
Table of Allotments,) RM-8817
TV Broadcast Stations.)
(Kansas City, Missouri))

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1996

Released: June 21, 1996

Comment Date: August 12, 1996

Reply Comment Date: August 27, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by TV-32, Inc. ("TV-32") proposing the substitution of UHF Television Channel 29 for UHF television Channel 32 at Kansas City, Missouri. TV-32 also requests modification of its construction permit for Station KCWB to specify operation on Channel 29.¹ To accommodate the allotment of Channel 29 at Kansas City, TV-32 requests that the coordinates for vacant Channel *22 at St. Joseph, Missouri, be changed.

2. In support of the proposal, TV-32 states that Channel 29 can be allotted to Kansas City consistent with all pertinent Commission requirements provided there is a change in the reference coordinates for vacant Channel *22 at St. Joseph, Missouri. TV-32 states that it is requesting the substitution of channels because it cannot obtain a permit from the local zoning authorities to construct Station KCWB on Channel 32 as authorized by the Commission. TV-32 states that it entered into a lease for a tower site and had targeted September 1, 1996, as the start-up date. However, TV-32 submits that it encountered well organized opposition from neighboring property owners for a special use permit to construct a tower at its proposed site. Further, TV-32 is also constrained within the fully spaced area by Federal Aviation Administration air-hazard limitations. TV-32 explains it has explored the possibility of utilizing an existing tower but has discovered that there are no fully-spaced tall towers that will allow for operation of Station KCWB on

¹ We note that on April 30, 1996, TV-32, Inc., pursuant to Section 73.1635 of the Commission's Rules, filed a request for special temporary authorization ("STA") to operate Station KCWB on commercial Channel 29 in lieu of channel 32 at Kansas City, Missouri.

Channel 32. All existing towers that could accommodate Channel 32 are significantly short-spaced to Station KBIN-TV, Channel 32, Council Bluffs, Iowa, and to Channel 18, Carrollton, Missouri. TV-32 contends that its proposal is consistent with the Commission's current freeze on new television channel allotments in certain major markets. The substitution of Channel 29 for Channel 32 at Kansas City will not create a new allotment or reduce the amount of spectrum currently authorized for possible ATV use in Kansas City. TV-32 points out that adoption of its proposal will provide immediate initiation of a new TV service in Kansas City and complete city grade coverage will be provided to the community. In addition, TV-32 states that if Station KCWB is authorized to operate on Channel 29, no other governmental approvals are necessary, as the tower site is in an antenna farm that has been approved by the FAA and local government authorities. TV-32 commits that if authorized to operate on Channel 29, it will immediately begin construction of Station KCWB and commence operation as soon as possible.

3. A staff engineering analysis of the proposal has determined that UHF Television Channel 29 can be allotted to Kansas City in compliance with the Commission's minimum distance separation requirements.² To accommodate the allotment of Channel 29 at Kansas City, we shall also propose to change the reference site for vacant Channel *22 at St. Joseph, Missouri.³ Although the Commission has imposed a freeze on television allotments in certain metropolitan areas, which include Kansas City, our consideration of the Kansas City substitution is not prevented by the freeze.⁴ The adoption of the proposal would not result in a new allotment but merely a change in the frequency of an existing allotment. With respect to St. Joseph, the new site proposed for Channel *22 is further removed from Kansas City than the present Channel *22 allotment site.

4. We believe the public interest would be served by proposing the substitution of UHF Television Channel 29 for UHF Television Channel 32 at Kansas City, Missouri, as it will permit the initiation of a new television service in Kansas City. We tentatively conclude that TV-32 has shown that it is unable to operate a station on Channel 32 at Kansas City in-compliance with the Commission's spacing requirements despite diligent efforts. Since Station KCWB has never been on the air, a change in channels will not cause disruption to existing service. Therefore, as requested, we shall propose to modify TV-32's construction permit for Station KCWB to specify operation on Channel 29 at Kansas City, Missouri. We will not accept competing expressions of interest in the use of Television Channel 29 at Kansas City. In addition, we will propose changing the reference site coordinates for vacant Channel *22 at St. Joseph, Missouri.

² The coordinates for Channel 29 at Kansas City are 39-05-01 and 94-30-57.

³ The coordinates for Channel *22 at St. Joseph are 39-54-40 and 94-50-18.

⁴ See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346, July 29, 1987.

5. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>	
	Present	Proposed
Kansas City, Missouri	4, 5+, 9+, *19+, 32-, 41-, 50-, 62+, *68-	4, 5+, 9+, *19+, 29-, 41-, 50-, 62+, *68-

6. 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.

7. Interested parties may file comments on or before August 12, 1996, and reply comments on or before August 27, 1996, 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's counsel, as follows:

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 Washington, D. C. 20006-1809

8. 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.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: 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 73.202(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 Procedures. 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 proposal(s) 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 Sections 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 239, at its headquarters, 1919 M Street, N.W., Washington, D. C.