

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

In the Matter of
Amendment of Section 73.622(i),
Post-Transition Table of DTV Allotments,
Television Broadcast Stations.
(South Bend, Indiana)
MB Docket No. 14-1
RM-11710

NOTICE OF PROPOSED RULEMAKING

Adopted: January 9, 2014

Released: January 9, 2014

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 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 LeSEA Broadcasting of South Bend, Inc. ("LeSEA"), the licensee of station WHME-TV, channel 48, South Bend, Indiana. Previously, on March 2, 2010, the Commission substituted channel 46 for channel 48 at LeSEA's request. By this petition, LeSEA seeks the substitution of its previously allotted channel 48.

2. LeSEA also seeks a waiver of the Commission's freeze on the filing of petitions for rulemaking by television stations seeking a channel substitution. LeSEA states that a waiver "would not undermine the purpose of the freeze since LeSEA has been operating WHME-TV's facilities on channel 48 continuously since 2006 and is seeking nothing more than to amend the Table to reflect the station's current operations"

3. In support of its petition for rulemaking, LeSEA asserts that it "has determined that it does not serve the public interest or make economic sense to expend resources to build WHME-TV's channel 46 facility, ..., when it is not certain that its new facilities will receive interference protection, and another channel change likely awaits during re-packing." LeSEA concludes that "Given the uncertainty, potential

1 LeSEA was originally assigned channel 48 at South Bend in the Post-Transition Table of DTV Allotments and continues to operate on that channel. LeSEA Petition for Rulemaking at n.1 (filed Oct. 25, 2013) ("LeSEA Petition").

2 South Bend, Indiana, Report and Order, 24 FCC Rcd. 5731 (2009) (LeSEA's channel 46 construction permit expires on March 8, 2014.).

3 Freeze on the Filing of Petitions for Digital Channel Substitutions, Public Notice, 26 FCC Rcd 7721 (MB 2011).

4 LeSEA Petition at 2.

5 Id. at 3 (citing Incentive Auction NPRM; Media Bureau Announces Limitations on the Filing and Processing of

loss of investment, and the disruption to the public from having to channel change again after the spectrum auctions, it is best for LeSEA [to] continue operations on WHME-TV on channel 48”⁶

4. Under the circumstances presented by LeSEA, we believe a waiver of the freeze on the filing of channel substitution rulemaking petitions would serve the public interest. We also believe that LeSEA’s petition for rulemaking warrants consideration. Channel 48 can be substituted for channel 46 at South Bend, Indiana as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission’s rules,⁷ at coordinates 41-35-43 N. and 86-09-38 W. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission’s rules.⁸ We propose to substitute channel 48 for channel 46 for station WHME-TV at South Bend with the following specifications:

State and City	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
South Bend, Indiana	48	300	295

5. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(i) of the Commission’s rules,⁹ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
South Bend, Indiana	22, *35, 42, 46	22, *35, 42, 48

6. The Commission’s authority to institute rulemaking proceedings, required showings, 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.¹⁰ 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

Fill Power and Class A Television Station Modification Applications, Public Notice, DA 13-618, 28 FCC Rcd 4364 (MB 2013) (“For stations with non-covered authorized facilities [licensed after Feb. 22, 2012, the enactment date of the Spectrum Act, Middle Class Tax Relief and Job Creation Act of 2012, [Pub. L. No. 112-96](#), Title VI, 125 Stat. 156 (2012) (“Spectrum Act”),] we take this opportunity to remind them, before additional investments are made in these non-covered facilities, that the extent to which the non-covered facility will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.”).

⁶ *Id.*

⁷ 47 C.F.R. § 73.625(a).

⁸ 47 C.F.R. §§ 73.616 and 73.623.

⁹ 47 C.F.R. § 73.622(i).

¹⁰ 47 C.F.R. § 73.623(h)(3).

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 [30 days after publication in the Federal Register] and reply comments on or before [45 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 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:

Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, L.L.P.
1080 West Causeway Approach
Mandeville, LA 70471-3036

8. Parties must file an original and one copy of each filing.¹¹ 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). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters Building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 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 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 FCC Headquarters at 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.¹² 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 DTV Table of 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 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

¹¹ *Amendment of Certain of the Commission's Part I Rules of Practice and Procedure and Part 0 of Commission Reorganization*, GC Dkt. No. 10-4, Report and Order, 26 FCC Rcd 1594, ¶ 21 (2011).

¹² See 47 C.F.R. § 1.7.

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) 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 DTV Table of 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,¹³ 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 Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.419(b), an original and one copy of all comments, reply comments, pleadings, briefs, or other documents shall be

¹³ *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (MB 2004).

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.