

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
(Dayton, Ohio)
MB Docket No. 14-159
RM-11735

NOTICE OF PROPOSED RULEMAKING

Adopted: September 18, 2014

Released: September 18, 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 WKEF Licensee L.P. ("WKEF Licensee"), the licensee of WKEF(TV), channel 51, Dayton, Ohio. WKEF Licensee requests the substitution of channel 18 for channel 51 at Dayton.

2. WKEF Licensee states that grant of the petition would serve the public interest. While the Commission instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept petitions for rulemaking filed by full power television stations seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. WKEF Licensee has entered into such a voluntary relocation agreement with T-Mobile, Inc. and states that operation on channel 18 would eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHz A Block.

3. We believe that WKEF Licensee's proposal warrants consideration. Channel 18

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

2 Public Notice, "General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window for Pending Channel 51 Low Power Television, TV Translator and Class A Applications," 26 FCC Rcd 11409 (MB 2011).

3 WKEF Licensee Petition for Rulemaking at 1-2.

4 In determining whether to grant a rulemaking petition to relocate from channel 51, the Media Bureau must

can be substituted for channel 51 at Dayton, Ohio as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules,⁵ at coordinates 39-43-28 N. and 84-15-18 W.⁶ 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.⁷ We propose to substitute channel 18 for channel 51 for station WKEF(TV) with the following specifications:

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Dayton, Ohio	18	525	351

4. 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>
Dayton, Ohio	*16, 30, 41, 50, 51	*16, 18, 30, 41, 50

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. 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

assess the extent to which grant of the petition will affect repacking flexibility in connection with the broadcast television spectrum incentive auction. *See In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6658-59, para. 203 & n.658 (2014). Because the noise-limited contour of the proposed channel 18 facility is encompassed by the noise-limited contour of the station's licensed facility, protecting the channel 18 facility rather than the channel 51 facility will not significantly impact our flexibility.

⁵ 47 C.F.R. § 73.625(a).

⁶ The proposed facility is located within the Canadian coordination zone, and the Canadian government has concurred with this allotment.

⁷ 47 C.F.R. §§ 73.616, 73.623.

⁸ 47 C.F.R. § 73.622(i).

⁹ 47 C.F.R. § 73.623(h)(3).

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.

6. 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:

Clifford M. Harrington, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, D.C. 20037-1128

7. Parties must file an original and one copy of each filing.¹⁰ 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 Headquarter 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.¹¹ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making 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

¹⁰ See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1602, para. 21 (2011).

¹¹ See 47 C.F.R. § 1.7.

concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

9. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, Media Bureau, (202) 418-2651. 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 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) 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 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 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,¹² we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rule making 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 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. 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

¹² 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).

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 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.