

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

)	
In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-44
Table of Allotments,)	RM-10022
Digital Television Broadcast Stations.)	
(Derby, Kansas))	
)	
)	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: August 2, 2002

Released: August 9, 2002

Comment Date: September 30, 2002

Reply Comment Date: October 15, 2002

By the Chief, Video Division:

1. The Commission has before it a *Notice of Proposed Rule Making*, 16 FCC Rcd 4423 (2001), requesting comments on the petition for rule making filed by Pappas Telecasting of America ("Pappas"). Pappas sought the allotment of channel 59 to Derby, Kansas, as the community's first local commercial television service. Pappas filed comments and reply comments. No other parties filed comments.

2. Pappas originally filed a petition for rule making on July 22, 1996, seeking the allotment of channel 46 to Derby, Kansas. Subsequently, Pappas amended its petition for rule making to invoke the provisions outlined in the Commission's Public Notice (*Public Notice*) released on November 22, 1999, DA 99-2605. In that, *Public Notice* the Commission announced a window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television station to modify their requests to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69. Pappas stated that its original proposal to allot channel 46 to Derby would cause interference to a channel 45 DTV allotment at Wichita, Kansas. Thus, Pappas amended its original proposal to specify channel 59 in lieu of channel 46 at Derby, Kansas.

3. After the *Notice* was released in this proceeding, the Commission adopted an *Order* reallocating the 698-746 MHz Spectrum Band (television channels 52-59) from use by television broadcasters to new uses.¹ In that *Reallocation Report and Order*, the Commission dismissed

¹ See *Reallocation and Service Rules for 698-746 MHz Spectrum Band (Television Channels 52-59)* ("*Reallocation Report and Order*"), Report and Order in GN Docket No. 01-74, 17 FCC Rcd 1022 (2002).

pending petitions for new NTSC channel allotments in the 698-746 MHz band, but stated that petitioners could re-file their petition to specify a new NTSC allotment channels (2-51), or a DTV allotment on channels (52-58). Pappas now submits for consideration a proposal to allot DTV channel 46 to Derby, Kansas, as the community's first local commercial DTV service.

4. In support of its latest proposal, Pappas states that the city of Derby is an incorporated community with a 2000 U.S. Census population of 17,807. Derby has its own post office and zip code, and at least one bank as well as the Burlington Northern Santa Fe Railroad serves it. Pappas asserts that the allotment of DTV channel 46 to Derby would provide the community with a first local television service, thereby promoting the objective set forth in Section 307(b) of the Communications Act of providing a fair, efficient, and equitable distribution of television broadcast stations among the various states and communications.

5. We believe Pappas' proposal warrants consideration. We are issuing this *Further Notice* to seek comments on Pappas' new channel proposal. DTV Channel 46 can be allotted to Derby, Kansas, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 37-54-12 N. and 97-37-06 . We propose to allot DTV Channel 46 with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
KS Derby	46	1000	246

6. 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>
Derby, Kansas	--	46

7. 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.

8. Interested parties may file comments on or before September 30, 2002, and reply comments on or before October 15, 2002, 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:

Vincent J. Curtis, Jr.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(Counsel for Pappas Telecasting of America)

9. 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.

10. 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 references 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 12th 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.