

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

In the Matter of)	
)	
Amendment of Section 73.622(b),)	
Table of Allotments,)	MB Docket No. 02-223
Digital Television Broadcast Stations)	RM-10520
(Avalon, California))	

REPORT AND ORDER

Adopted: September 10, 2002

Released: September 18, 2002

By the Chief, Video Division, Media Bureau:

1. At the request of Pappas Southern California License, LLC (Pappas), licensee of analog television station KAZA-TV, NTSC Channel 54, Avalon, California, the Commission has before it the Notice of Proposed Rulemaking, DA 02-1938 (released August 7, 2002), seeking comment on Pappas' proposal that the Commission allot DTV Channel 47 to Avalon.¹ Comments and reply comments were filed by Pappas.² Coast Community College District (CCDC) and Costa de Oro Television, Inc. (Costa) filed Joint Comments in support of Pappas' proposal.³ Sunbelt Television, Inc. (Sunbelt), the licensee of analog television station KHIZ(TV), NTSC Channel 64, Barstow, California, filed a counterproposal, requesting that the Commission amend the DTV Table of Allotments to substitute Channel 47 for the presently allotted Channel 44 at Barstow, but withdrew that counterproposal in its reply comments, based upon its determination that Channel 55 is also available for allotment to Barstow as a paired DTV channel.

2. Pappas' proposal to allot Channel 47 at Avalon complies with the Commission's rules and allotment policies, except in one respect. According to Pappas, KAZA-DT's operation at 500 kilowatts ERP on DTV Channel 47 from the proposed site on Mount Wilson provides the required protection to the authorized facility for DTV station KOCE-DT, DTV Channel *48, Huntington Beach, California, on Mount Wilson. However, in order to protect KOCE-DT's allotment site at La Habra Heights,⁴ the present site of its analog station, Pappas would need to limit KAZA-DT's ERP to only 11

¹ As set forth in the Notice, Avalon does not presently have a paired DTV channel allotment, and Pappas filed its petition pursuant to Section 531 of the Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002, Public Law No. 107-188, 116 Stat. 594, enacted June 12, 2002.

² Pappas also filed a motion for leave to file and supplemental reply comments on August 30, 2002, which have been considered.

³ CCDC is the licensee of analog television station KOCE-TV, NTSC Channel *50, and permittee for station KOCE-DT, Channel *48, Huntington Beach, California. Costa is the licensee of analog television station KJLA(TV), NTSC Channel 57, and permittee of station KJLA-DT, Channel 49, Ventura, California.

⁴ Section 73.622(d) provides that where a DTV station has been granted authority to construct more than 5 kilometers from its reference coordinates pursuant to Section 73.622(c), and its authorized coverage area extends beyond the DTV coverage area determined for the DTV allotment reference facilities, "the coordinates of such authorized site are to be used in addition to the coordinates of the DTV allotment to determine protection from new DTV allotments pursuant to §73.623(d)."

kw, which would be inadequate to comply with the principal community coverage requirements of Section 73.625(a). Thus, Pappas requests that the Commission waive the requirement that KAZA-DT protect the allotment site at La Habra Heights for KOCE-DT's DTV Channel *48 allotment. In support, Pappas submits a letter from KOCE-DT, confirming that it intends to construct at its presently-authorized site at Mt. Wilson, and consenting to the grant of Pappas' application.

3. In the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 00-39, FCC 01-24 (rel. January 19, 2001), the Commission stated that it would cease to give DTV interference protection to commercial broadcasters' unreplicated service areas as of December 31, 2004, and thus, commercial broadcasters that did not replicate their NTSC Grade B service area as of that date left the unreplicated portions of their DTV service area unprotected. On reconsideration, however, the Commission agreed with petitioners that the fixed date was too soon to reasonably expect all stations to have constructed full replication facilities, and announced that it would continue to protect the replication service areas in the DTV Table of Allotments until the replication deadline it would establish in its subsequent periodic review.⁵ The Commission envisioned that under this policy:

[S]tations will be allowed, without loss of full service area protection, to commence digital operations by constructing and operating facilities that at least provide the required level of digital signal strength to their communities of license. This will allow stations to focus their energies initially on providing digital service to their core communities, while permitting them later to expand their coverage area as the DTV transition progresses. . . . The requirement that broadcasters serve their communities of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service. Once all broadcast stations have commenced at least the minimal level of service to their communities, we believe the DTV set penetration levels will increase and marketplace forces will work to further speed the transition and provide an incentive to broadcasters to expand to provide service for outlying areas. We are hopeful this approach will prompt broadcasters to build out to their allotted power in response to consumer demand and competition from other stations.

Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20604 (2001)

4. Under the circumstances here, we conclude that allotment of Channel 47c as proposed by Pappas would not undermine the underlying purpose of the Commission's decision to continue to require protection of the replication areas in the DTV Table of Allotments, which was intended to permit broadcasters to commence digital service with smaller, less expensive facilities to get more digital stations on the air as quickly as possible, with the expectation that many of these stations would eventually build out to full replication facilities as the DTV transition progresses. KOCE-DT, however, does not intend to construct pursuant to a minimum construction schedule, and has instead stated that it intends to build its full replication facility at Mt. Wilson, and does not object to the proposed allotment of Channel 47c. We are also mindful that Congress has concluded that the public interest would be served by allotting and assigning a paired DTV channel to KAZA-TV, and directed the Commission to conclude such proceeding by September 10, 2002. Finally, the Commission recognizes that the Southern California area has been one of the most challenging geographic areas in terms of designing the DTV Table of Allotments. See *Memorandum Opinion and Order and Order on Reconsideration of Sixth Report and Order*, 13 FCC Rcd 7418, 7471 (1998).

5. We find that the public interest would be served by the allotment of Channel 47c to Avalon, at coordinates 34-13-35 N. and 118-3-58 W. However, since the community of Avalon is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government is

⁵ See 47 U.S.C. §§ 309(j)(14), 337 (requiring the Commission to recover broadcast spectrum for new uses.)

required for this allotment. Accordingly, we will stay the effective date of this Order until such concurrence has been obtained. In the event Mexican concurrence is not given, our allotment of Channel 47c at Avalon will be null and void.⁶

6. Accordingly, pursuant to the authority contained 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 ORDERED, That effective 60 days after concurrence by the Mexican government has been obtained, the DTV Table of Allotments, Section 73.622(b) of the Commission’s Rules, WILL BE AMENDED, with respect to the community below, to read as follows:

City and State of License	Present Channel(s)	Proposed Channel(s)
Avalon, California	--	47c

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of the rule change, Pappas Southern California License, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 47c for Station KAZA-TV.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Joyce Bernstein, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
 Chief
 Video Division
 Media Bureau

⁶ We will not, in this proceeding, consider Sunbelt’s request that we amend the DTV Table of Allotments to substitute Channel 55 for Channel 44 at Barstow. Section 1.420 of the rules clearly provides that “counterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments.” 47 C.F.R. § 1.420(d). Moreover, Sunbelt’s request that we substitute Channel 55, rather than Channel 47, is not mutually exclusive with Pappas’ proposal that we allot Channel 47c to Avalon. Sunbelt may, however, file a rulemaking petition for a DTV channel substitution at any time.