

FILE COPY ORIGINAL

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

MM Docket No. 92-22

In the Matter of

Amendment of Section 73.202(b), RM-7898  
Table of Allotments,  
FM Broadcast Stations.  
(Dumas and Marianna, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 4, 1992; Released: February 12, 1992

Comment Date: April 6, 1992

Reply Comment Date: April 21, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Alan W. Eastham and Craig Eastham, d/b/a KXFE-FM ("petitioners"), licensee of Station KXFE(FM), Channel 296A, Dumas, Arkansas, requesting the substitution of Channel 295C3 for Channel 296A at Dumas and modification of its license for Station KXFE(FM) to specify operation on the higher powered channel. Additionally, in order to accommodate the proposal in conformity with the minimum distance separation requirements, petitioners further request the substitution of Channel 287A for vacant Channel 295A at Marianna, Arkansas.<sup>1</sup> Petitioners stated their intention to apply for Channel 295C3, if allotted.

2. A staff analysis has determined that Channel 295C3 can be allotted to Dumas consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site located 13.9 kilometers (8.6 miles) west of the community,<sup>2</sup> provided that vacant Channel 295A is deleted at Marianna, Arkansas. Channel 287A can be allotted to Marianna with a site restriction 1.2 kilometers (0.7 miles) north<sup>3</sup> of the community to avoid short spacing to Station KCLT(FM), Channel 285A, West Helena, Arkansas.<sup>4</sup>

3. We believe the public interest would be served by consideration of petitioners' proposal since it could provide Dumas with a wide coverage area FM service. Therefore, we shall propose to modify the license for Station KXFE(FM), as requested. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules we will not accept other expressions of interest in the use of Channel 295C3 at Dumas or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Present	Channel No.	Proposed
Dumas, Arkansas	296A		295C3
Marianna, Arkansas	295A		287A

5. IT IS ORDERED, That the Secretary shall send a copy of this Notice to the permittee of Station WMJW(FM), as follows: Carol B. Ingram, P.O. Box 73, Batesville, MS 38606.

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 April 6, 1992, and reply comments on or before April 21, 1992, 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 petitioners' counsel, as follows:

Cary S. Tepper, Esq.  
Putbrese, Hunsaker & Ruddy  
6800 Fleetwood Road  
P.O. Box 539  
McLean, VA 22101

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*

<sup>1</sup> The construction permit issued to Ramblin Communications for Channel 295A at Marianna, Arkansas (File No. BPH-910617JZ) was dismissed by letter on October 15, 1991. Therefore, a new filing window will be opened for the channel at Marianna upon termination of this proceeding.

<sup>2</sup> Coordinates for Channel 295C3 at Dumas are 33-55-34 and 91-38-04. The site restriction is required to avoid a short-spacing to the reference coordinates for Channel 294C2, Benton, Arkansas, at 34-42-05 and 92-30-00. Although the Dumas proposal is short spaced to the construction permit issued for Station WMJW(FM), Channel 295A, Cleveland, Mississippi, Station WMJW(FM) was modified effective November 18, 1991, to speci-

fy operation on Channel 298C3 and to change its community of license to Rosedale, Mississippi, in MM Docket No. 89-415. See 6 FCC Rcd 5583 (1991). We will serve a copy of this Notice on Station WMJW(FM). (Coordinates for Channel 298C3 at Rosedale are 33-56-20 and 90-51-10. Coordinates at the site specified in the application of Station WMJW(FM) (File No. BPH-911030IE) at Rosedale are 33-56-58 and 90-51-57.)

<sup>3</sup> Coordinates for Channel 287A at Marianna are 34-47-01 and 90-45-59.

<sup>4</sup> Coordinates at the licensed site of Station KCLT(FM) are 34-30-56 and 90-40-13.

*the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. 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

Michael C. Ruger  
Assistant Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### 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 Section 1.420(a), (b) and (c) of the Commission's Rules.)

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 Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.