

FCC MAIL SECTION

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

DISPATCHED MM Docket No: 92-86

In the Matter of

Amendment of Section 73.202(b), RM-7961
Table of Allotments,
FM Broadcast Stations.
(Paradise and Fort Bragg,
California)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992;

Released: April 17, 1992

Comment Date: June 8, 1992

Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Paradise Broadcasting, Inc. ("petitioner"), licensee of Station KZZP(FM), Channel 244A, Paradise, California. Petitioner seeks to amend the FM Table of Allotments by substituting Channel 244B1 for Channel 244A at Paradise and modifying its license for Station KZZP(FM) to specify operation on the higher powered channel. In order to accommodate its request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also seeks the substitution of Channel 228B for Channel 244B at Fort Bragg, California,¹ and modification of the license issued to The Henry Radio Company ("Henry Radio") for Station KLLK-FM² accordingly. Petitioner states that it will apply for Channel 244B1 if allotted to Paradise, and will reimburse the licensee of Station KLLK-FM at Fort Bragg for the costs associated with its change of channel. See *Circleville, OH*, 8 FCC 2d 159 (1967).

2. In support of its proposal, petitioner states that the requested substitution at Paradise would enable it to provide the community with an expanded coverage area FM broadcast service. Petitioner's proposal includes a statement from Brian J. Henry, a general partner of Henry Radio, stating that Henry Radio consents to the requested substitution proposal for Station KLLK-FM at Fort Bragg.

3. A staff engineering analysis has determined that Channel 244B1 can be substituted for Channel 244A at Paradise at the petitioner's suggested site, located 22.3 kilometers (13.9 miles) north of the community.³ Channel 228B can be substituted for Channel 244B at Fort Bragg at the authorized site for Station KLLK-FM.⁴

4. The petitioner's modification request conforms with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the facilities of Station KZZP(FM) at Paradise, and Station KLLK-FM at Fort Bragg, California, as requested, without entertaining other expressions of interest.

5. An *Order to Show Cause* to Station KLLK-FM at Fort Bragg is not required in view of its consent to the petitioner's modification request. However, we will serve Henry Radio with a copy of this *Notice*.

6. In view of the above, we consider it appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Paradise, California	244A, 278B1	244B1, 278B1
Fort Bragg, California	237A, 244B, 253B1	228B, 237A, ⁵ 253B1

7. IT IS ORDERED That the Secretary of the Commission SHALL SEND a copy of this *Notice by Certified Mail, Return Receipt Requested*, to The Henry Radio Company, 12 West Valley Street, Willits, California, 95490.

8. 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.

9. Interested parties may file comments on or before **June 8, 1992**, and reply comments on or before **June 23, 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 petitioner, as follows:

¹ The distance between the Paradise proposal and Station KLLK-FM at Fort Bragg is 183.6 kilometers (114 miles), whereas the required distance is 211 kilometers (131 miles).

² Although Station KLLK-FM currently operates on Channel 244A, its license was modified to specify operation on Channel 244B in MM Docket No. 90-599, effective December 2, 1991. See 6 FCC Rcd 5817 (1991).

³ Coordinates at the petitioner's suggested site for Channel

244B1 are 39-57-29 and 121-42-50.

⁴ Coordinates at the authorized site for Station KLLK-FM are 39-27-53 and 123-45-27.

⁵ The Commission is currently considering a proposal to substitute Channel 237B1 for Channel 237A at Fort Bragg, California. See *Notice of Proposed Rule Making*, 7 FCC Rcd 1413 (1992), in MM Docket No. 92-25.

Mr. Robb Cheal
Paradise Broadcasting, Inc.
407 West 9th Street
Chico, CA 95928

10. 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 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.

11. 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
Acting 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.