

ORIGINAL

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

JUL 28 2 24 PM '92
FEDERAL MAIL SECTION
DISPATCHED BY

MM Docket No. 92-158

In the Matter of

Amendment of Section 73.202(b), RM-8025
Table of Allotments,
FM Broadcast Stations.
(Palmer, Alaska)

tent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, without the imposition of a site restriction.⁵

4. In view of the above, 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 community listed below, as follows:

	Channel No.	
City	Present	Proposed
Palmer, Alaska	239C1	238C1

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. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before September 18, 1992, and reply comments on or before October 5, 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's counsel, as follows:

Paul J. Berman, Esq.
Francis R. Hawkins, Jr., Esq.
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044

NOTICE OF PROPOSED RULE MAKING

Adopted: July 14, 1992; Released: July 28, 1992

Comment Date: September 18, 1992
Reply Comment Date: October 5, 1992

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Pioneer Broadcasting Company, Inc. ("petitioner"), licensee of Station KWHL(FM), Anchorage, Alaska, seeking the substitution of Channel 238C1 for vacant Channel 239C1 at Palmer, Alaska.¹

2. In support of the proposal petitioner states that the requested substitution of Channel 238C1 at Palmer is required to accommodate its application to relocate the transmitter for Station KWHL(FM) and to upgrade its facilities to full Class C status.² Petitioner advises that its pending application for Channel 293C at Anchorage³ is short-spaced to Channel 239C1 at Palmer.⁴ Moreover, petitioner asserts that it is constrained in site alternatives due to the scarcity of area transmitter sites that would provide protection to other spectrum users, such as the Commission's monitoring station in Anchorage, as well as the ILS facilities at Elmdorf Air Force Base. Petitioner claims that unless it can relocate to its preferred site, Station KWHL(FM) will be precluded from retaining a Class C status.

3. In view of the above, we believe the public interest would be served by substituting Channel 238C1 for Channel 239C1 at Palmer, as requested, since it could enable Station KWHL(FM) to expand its coverage area at Anchorage. Channel 238C1 can be allotted to Palmer consis-

7. 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.

8. 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

¹ The construction permit issued to Valley Broadcasting Co., Inc. for Station KUZN(FM) on Channel 239C1 at Palmer (File No. BPH-850228MF), was dismissed by letter on June 10, 1991. Therefore, a new filing window will be opened for the channel at Palmer upon the termination of this proceeding.

² Since Station KWHL's currently licensed facilities (100 kilowatts at -27 meters HAAT) is less than the minimum now required for retention of Class C status, it is subject to a reclassification. See *Public Notice*, March 24, 1987, *Reclassification of FM Facilities Pursuant to BC Docket No. 80-90*, 2 FCC Rcd 2124 (1987). Petitioner's pending modification

application for Station KWHL(FM) (File No. BPH-870227MI) (specifying 100 kilowatts at 311 meters HAAT), is designed to conform with the Commission's reclassification policy.

³ Coordinates at the petitioner's preferred site at Anchorage are 61-20-10 and 149-30-46.

⁴ Petitioner's preferred site is 35.3 kilometers from Channel 239C1 at Palmer, at coordinates 61-38-39 and 149-21-34, whereas a distance of 41 kilometers is required.

⁵ Coordinates used for Channel 238C1 at Palmer are 61-36-00 and 149-06-30.

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
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.