

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

MM Docket No. 92-176

In the Matter of

Amendment of Section 73.202(b), RM-8038  
Table of Allotments,  
FM Broadcast Stations.  
(Bentonville and Mountain Home,  
Arkansas)

**NOTICE OF PROPOSED RULE MAKING AND  
ORDER TO SHOW CAUSE**

Adopted: July 24, 1992; Released: August 24, 1992

Comment Date: October 15, 1992  
Reply Comment Date: October 30, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by Demaree Media, Inc. ("petitioner"), licensee of Station KOLZ(FM), Bentonville, Arkansas, seeking the substitution of Channel 252C2 for Channel 252C3,<sup>1</sup> and modification of its license to specify operation on the higher powered channel. In order to accommodate the request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 232A for Channel 252A at Mountain Home, Arkansas, and modification of the license of Mountain Home Broadcasting Corp. for Station KTLO-FM.<sup>2</sup>

2. A staff engineering analysis reveals that Channel 252C2 can be substituted for Channel 252C3 at the petitioner's suggested site, located 28 kilometers (17.4 miles) southeast of the community,<sup>3</sup> consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.<sup>4</sup> Additionally, Channel 232A can be substituted for Channel 252A at Mountain Home, Arkansas, at the authorized site of Station KTLO-FM.<sup>5</sup>

<sup>1</sup> Although petitioner is presently licensed on Channel 252A, it was modified to specify operation on Channel 252C3 in MM Docket No. 91-124. See 6 FCC Rcd 6498 (1991). Petitioner has filed an application for a construction permit on Channel 252C3 (File No. BPH-9205181A).

<sup>2</sup> Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice

3. We believe the public interest would be served by the proposal since it could enable Station KOLZ(FM) to expand its coverage area. Therefore, we will solicit comments on the proposal.

4. Since the petitioner's modification request at Bentonville is consistent with the provisions of Section 1.420(g) of the Commission's Rules, we shall propose to modify the license of Station KOLZ(FM) without entertaining competing expressions of interest in the use of Channel 252C2 at that community, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KTLO-FM at Mountain Home, Arkansas, as to why its license should not be modified to specify operation on Channel 232A in lieu of Channel 252A.

5. Whenever an existing licensee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. In this instance, petitioner has stated its willingness to reimburse Station KTLOFM for its reasonable costs associated with moving to Channel 232A.

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

City	Channel No.	
	Present	Proposed
Bentonville, Arkansas	252C3	252C2
Mountain Home, Arkansas	252A, 288C2, 298C1	232A, 288C2, 298C1

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Mountain Home Broadcasting Corp., licensee of Station KTLO-FM, Channel 252A, Mountain Home, Arkansas, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 232A in lieu of Channel 252A.

8. Pursuant to Section 1.87 of the Commission's Rules, Mountain Home Broadcasting Corp. may, not later than **October 15, 1992**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Mountain Home Broadcasting Corp. to furnish additional information. If Mountain Home Broadcasting Corp. raises a substantial and material question of fact,

that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Petitioner is requested to correct this omission in its comments.

<sup>3</sup> Coordinates at the petitioner's suggested site for Channel 252C2 at Bentonville are 36-11-00 and 94-00-00.

<sup>4</sup> The proposal for Channel 252C2 at Bentonville conflicts with the presently licensed operation of Station KOCD(FM) on Channel 252A at Columbus, Kansas. However, Station KOCD(FM) has been modified to specify operation on Channel 287C3, for which it has been issued a construction permit (File No. BPH910506IF). A copy of this *Order* will be served on Station KOCD(FM).

<sup>5</sup> Coordinates at the licensed site of Station KTLO-FM are 36-20-55 and 92-23-59.

a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Mountain Home Broadcasting Corp. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the licensee of Station KTOL-FM, as follows: Mountain Home Broadcasting Corp., P.O. Box C, Mountain Home, AR 72653 and to Saturn Communications, Inc., Radio Station KOCD(FM), 3001 W. 13th Street, Joplin, MO 64802.

10. 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.

11. Interested parties may file comments on or before **October 15, 1992**, and reply comments on or before **October 30, 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:

Demaree Media, Inc.

Attn: L. Patrick Demaree, President

Post Office Box 878

Fayetteville, AR 72702

12. 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.

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  
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.