

FCC MAIL SECTION

Federal Communications Commission
Washington, D.C. 20554

Oct 2 3 04 PM '92

MM Docket No. 92-221

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In the Matter of

Amendment of Section 73.202(b), RM-8071
Table of Allotments,
FM Broadcast Stations.
(Quincy and Susanville,
California)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 9, 1992; Released: October 2, 1992

Comment Date: November 23, 1992

Reply Comment Date: December 8, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Olympic Broadcasters, Inc. ("petitioner"), licensee of Station KQNC(FM), Quincy, California, requesting the reallocation of Channel 271A to Susanville, California, as a Class C2 channel, and modification of its license accordingly.¹ Petitioner stated its intention to apply for Channel 271C2 if allotted to Susanville, as requested.

2. In support of its proposal, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. Petitioner states that the proposed allotment of Channel 271C2 at Susanville (population 7,279),² is mutually exclusive with the present allotment of Channel 271A at Quincy (population 2,700). The distance between Quincy and the site suggested by the petitioner at Susanville is 52.5 kilometers (32.4 miles), whereas Section 73.207(b)(1) requires a minimum distance separation of 166 kilometers (103 miles) between co-channel Class A and C2 stations. Petitioner states that its proposal would provide an additional competitive transmission service to Susanville,³ and would not deprive Quincy of local service.⁴

3. We believe the proposal warrants further consideration since it could provide the larger community of Susanville with an additional local transmission service

without depriving Quincy of its sole local broadcast service, and could permit Station KQNC(FM) to operate at increased power. We will also propose to modify petitioner's license for Station KQNC(FM) to specify operation on Channel 271C2 at Susanville, California, as requested. In accordance with the provisions of Section 1.420(g) and (i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 271C2 at Susanville, 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 proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Quincy, California	240A, 262C3, 271A	240A, 262C3
Susanville, California	227C, 242C	2227C, 242C2, 271C2

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 **November 23, 1992**, and reply comments on or before **December 8, 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:

Richard A. Helmick, Esq.
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036

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

¹ Although petitioner is presently licensed on Channel 271C2 at Quincy, it was downgraded to Channel 271A to accommodate the modification of its commonly owned Station KFIA-FM, Shingle Springs, California. See 7 FCC Rcd 3113 (1992). Petitioner has filed an application to implement the downgrade at Quincy (File No. BPH-920730IG).

² Population figures reported herein are from the 1990 U.S. Census.

³ Susanville presently has two local aural transmission services provided by fulltime Station KSUE(AM) and Station KSUE-FM, Channel 227C. Although a third service has been au-

thorized at Susanville for Station KKLC(FM), Channel 242C3 (File No. BPH-910204MZ), the facility is currently off the air.

⁴ In addition to Station KQNC(FM), Quincy is served by fulltime Station KPCCO(AM). Additionally, construction permits have been issued to Station KNLF(FM) on Channel 276A and to Station KSPY(FM) on Channel 262A at Quincy. Station KNLF(FM) was recently modified to specify operation on Channel 240A. See 7 FCC Rcd 1318 (1992). Station KSPY(FM) has been modified to specify operation on Channel 262C3 at Quincy. See 7 FCC Rcd 3899 (1992).

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 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.