

FCC MAIL SECTION

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

APR 8 3 21 PM '93

DISPATCHED BY

MM Docket No. 93-74 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8153  
Table of Allotments,  
FM Broadcast Stations.  
(Yermo, California)

**NOTICE OF PROPOSED RULE MAKING**

Adopted: March 8, 1993; Released: April 8, 1993

Comment Date: June 1, 1993  
Reply Comment Date: June 16, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Antelope Broadcasting Co., Inc. ("petitioner"), permittee of Station KYHT(FM), Channel 287A, Yermo, California, seeking the substitution of Channel 287B1 for Channel 287A and modification of its authorization accordingly. Petitioner stated its intention to apply for Channel 287B1 if it is allotted to Yermo as requested.

2. We believe the public interest would be served by proposing the substitution of Channel 287B1 for Channel 287A at Yermo since it could provide an enhanced service to the community. Channel 287B1 can be allotted to Yermo at the petitioner's specified site, located 27.6 kilometers (17.1 miles) northeast of the community,<sup>1</sup> consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules. As Yermo is located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain concurrence of the Mexican government in the proposal.<sup>2</sup>

3. Additionally, we note that, at the rule making level, a Class B1 allotment is assumed to provide 70 dBu service to the entire community of license where the transmitter is located no more than 23.2 kilometers (14.3 miles) from the community's most distant boundary. Therefore, petitioner is expected to submit an engineering exhibit by the comment date demonstrating that its proposal would comply

with the principal city coverage requirements of Section 73.315(a) of the Commission's Rules. The engineering exhibit should include maps outlining the actual community boundaries of Yermo and the pertinent 70 dBu contour. Failure to provide the requested information could result in a denial of the proposal.

4. The petitioner's modification request at Yermo conforms with the provisions of Section 1.420 of the Commission's Rules. Therefore, we shall propose to modify the authorization of Station KYHT(FM) without entertaining competing expressions of interest in the use of Channel 287B1 at Yermo, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. 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 Yermo, California, as follows:

City	Present	Proposed
Yermo, California	251B, 287A	251B, 287B1

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 **June 1, 1993**, and reply comments on or before **June 16, 1993**, 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:

John F. Garziglia, Esq.  
Pepper & Corazzini  
200 Montgomery Building  
1776 K Street, N.W.  
Washington, D.C. 20006

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 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.

<sup>1</sup> Coordinates at the petitioner's specified site for Channel 287B1 at Yermo are 35-01-39 and 116-33-51. The site restriction is required to avoid short-spacing to the authorized site of Station KIQQ-FM, Channel 285A, Lenwood, California, at coordinates 34-51-20 and 117-02-57, as well as to Station KKGQ-FM, Channel 286B, Los Angeles, California, at coordinates 34-13-45 and 118-28-68, and to Station KDUQ(FM), Channel 289A, Ludlow, California, at coordinates 34-42-21 and 116-12-38. Petitioner should note the pendency of a proposal at Lenwood, California, (RM-8154) requesting *inter alia*, the substitution of

Channel 283A for Channel 285A and modification of the authorization for Station KIQQ-FM. If the Lenwood substitution is granted, it will eliminate only that aspect of the petitioner's need to restrict the location of its transmitter site to accommodate its modification proposal for Station KYHT(FM) at Yermo.

<sup>2</sup> Consideration of this proposal, and termination of this proceeding, is conditioned upon the adoption of a working arrangement between the United States and Mexican governments to implement the 1992 U.S./Mexico FM Broadcast Agreement.

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  
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.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

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.