

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

MM Docket No. 95-126

In the Matter of

Amendment of Section 73.202(b), RM-8671
Table of Allotments,
FM Broadcast Stations.
(Denison-Sherman, Paris, Jackson,
Texas, and Madill, Oklahoma)

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

Adopted: July 25, 1995; Released: August 4, 1995

Comment Date: September 25, 1995
Reply Comment Date: October 10, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Hunt Broadcasting, Inc. ("petitioner"), licensee of Station KDVE(FM), Channel 269C3, Denison-Sherman, Texas, requesting the substitution of Channel 269C1 for Channel 269C3 at Denison-Sherman, Texas, and modification of its license to specify the higher powered channel. In order to accommodate this proposal, petitioner also requests the substitution of Channel 282C2 for Channel 270C2 at Paris, Texas, and modification of Station KBUS(FM)'s license; Channel 273A for Channel 272A at Madill, Oklahoma, and modification of Station KMAD(FM)'s license; and Channel 252A for Channel 269A, as well as, a change of site for Station KAIH(FM) at Jacksboro, Texas, and modification of Station KAIH(FM)'s construction permit.¹ Petitioner acknowledges its responsibility to reimburse the licensees of Stations KBUS(FM) and KMAD(FM) for the reasonable expenses they would incur in changing channels. Petitioner states it will apply for Channel 269C1, if allotted.

2. We believe petitioner's proposal warrants consideration since it could enable Station KDVE(FM) to expand its coverage area. Channel 269C1, Channel 282C2, Channel 252A and Channel 273A can be allotted to Denison-Sherman, Paris, Jacksboro, Texas, and Madill, Oklahoma, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 269C1 can be

allotted to Denison-Sherman without the imposition of a site restriction.² Channel 252A can be allotted Jacksboro, Texas, with a site restriction of 3.4 kilometers (2.1 miles) northwest to accommodate petitioner's upgrade.³ As proposed. Channel 282C2 and Channel 273A can be allotted to Paris, Texas, and Madill, Oklahoma, respectively, at the transmitter sites specified Station KBUS(FM)'s and Station KMAD(FM)'s authorizations.⁴ Therefore, we will direct an *Order to Show Cause* to the licensees of Station KBUS(FM) and Station KMAD(FM) as to why their licenses should not be modified to specify operation on Channel 282C2 and Channel 273A as proposed herein instead of the present Channel 270C2 and 272A.

3. As requested, we shall propose to modify the license of Station KDVE(FM) at Denison-Sherman, Texas, to specify operation on Channel 269C1. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Denison-Sherman.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

| | Channel No. | |
|---------------------------|-----------------------|-----------------------|
| City | Present | Proposed |
| Denison-Sherman, Texas | 269C3 | 269C1 |
| Paris, Texas | 230C2, 270C2 299C2 | 230C2, 282C2 299C2 |
| Jacksboro, Texas | 269A | 252A |
| Madill, Oklahoma | 272A | 273A |

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended. Radio Station KMAD and Webster Broadcasting, Inc., respective licensees of Station KMAD(FM), Madill, Oklahoma, and Station KBUS(FM), Paris, Texas, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channel 273A and Channel 282C2 as proposed herein instead of Channel 272A and Channel 270C2.

6. Pursuant to Section 1.87 of the Commission's Rules. Radio Station KMAD and Webster Broadcasting, Inc., may not later than September 25, 1995, file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Radio Station KMAD and Webster Broadcasting, Inc. to furnish additional information. If Radio Station KMAD and Webster Broadcasting, Inc. raises a substantial and material question of fact, 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 modi-

¹ We note that petitioner is the proposed assignee of Station KAIH(FM) pursuant to an assignment application (BAPH-950502G). However, by supplemental filing Albert L. Crain, current licensee of Station KAIH(FM), has consented in advance to relocate Station KAIH(FM)'s transmitter to clear the proposed substitution of Channel 269C1 for Channel 269C3 at Denison-Sherman.

² The coordinates for Channel 269C1 at Denison-Sherman are

North Latitude 33-41-39 and West Longitude 96-34-38.

³ The coordinates for Channel 252A at Jacksboro, Texas, are North 33-14-26 and West Longitude 98-11-16.

⁴ The coordinates for Channel 282C2 at Paris, Texas, are North Latitude 33-45-04 and West Longitude 95-24-51. The coordinates for Channel 273A at Madill, Oklahoma, are North Latitude 34-06-24 and West Longitude 96-46-30.

fication, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radio Station KMAD and Webster Broadcasting, Inc. 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.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensees of Station KMAD(FM) and KBUS(FM):

Radio Station KMAD
P.O. Box 576
Madill, Oklahoma 73446
[Licensee of Station KMAD(FM)]

Webster Broadcasting, Inc.
231 S. LaSalle Street
Chicago, Illinois 60603
[Licensee of Station KBUS(FM)]

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 September 25, 1995, and reply comments on or before October 10, 1995, 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, or its counsel or consultant, as follows:

Joseph P. Benkert
1610 Wynkoop Street, Suite 200
Denver, Colorado 802-1196
(Counsel for petitioner)

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), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. 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 Com-

mission 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

Douglas W. Webbink
Chief, 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.