

FCC MAIL SECTION

Federal Communications Commission

DA 97-1975

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No .97-203.
Table of Allotments,)	RM-9132
FM Broadcast Stations.)	
(Wallace, Idaho and Lolo, Montana))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 10, 1997

Released: September 19, 1997

Comment Date: November 10, 1997

Reply Comment Date: November 25, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Hawkeye Radio Properties, Inc. ("petitioner"), permittee of Station KQWK(FM), Channel 248C2, Wallace, Idaho, seeking to amend the FM Table of Allotments by changing its community of license from Wallace, Idaho, to Lolo, Montana, and to modify its authorization to specify operation on Channel 248C3. Petitioner premises its proposal on the desire to bring a first local transmission service to Lolo, and stated its intention to apply for Channel 248C3 if it is reallocated to that community, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ Petitioner states that the requested allotment of Channel 248C3 to Lolo, Montana, a census designated place, is mutually exclusive with its existing authorization at Wallace, Idaho. The distance between Wallace and the petitioner's specified site at Lolo is 151.7 km (94 miles) whereas a distance of 177 kilometers (110 miles) is required in this instance.² In further support of the proposal, petitioner advises that Lolo, Montana (population 2,746),³ located in Missoula

¹See *Modification of FM License ("Change of Community R&O")*, 4 FCC Red 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Red 7094 (1990).

²Coordinates at the site specified by the petitioner for a transmitter site at Lolo, Montana, are 46-53-07 and 114-06-30. Coordinates at the authorized site of Station KQWK(FM) at Wallace, Idaho, are 47-28-27 and 115-54-49.

³Population figures cited herein are from the 1990 U.S. Census.

County, is currently devoid of local aural transmission service. Additionally, petitioner states that Lolo contains many of the requisite social, economic and cultural components commonly associated with determining community status.⁴ In particular, petitioner reports that Lolo has its own post office and zip code, a community council, local school board, an elementary and middle school, as well as numerous businesses that include Lolo in their name. Petitioner also advises that Lolo shares a telephone exchange with the nearby, smaller community of Florence, Montana.

3. In further support, petitioner states that adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),⁵ as the reallocation and downgrade would enable it to provide Lolo with its first local aural transmission service, while Wallace, Idaho, will retain local transmission service from fulltime AM station KWAL. Additionally, petitioner reports that a construction permit has been granted for Station KSIL(FM), to operate on Channel 264C at Wallace.

4. In accordance with Commission policy, if a proponent intends to locate its authorized facility from a rural community to a suburban community that is adjacent to an urbanized area, and from which its intended operation would place a city grade (70 dBu) signal over 50% or more of the urbanized area, the petitioner is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Red 10352 (1995). We recognize that neither Wallace, Idaho, nor Lolo, Montana, are located within an urbanized area. However, according to a staff analysis, in this instance, if Channel 248C3 is allotted to Lolo, Station KWQK(FM) will provide a 70 dBu signal over the entire Missoula, Montana, Urbanized Area. Therefore, the petitioner's request to change its community of license is subject to the provision of additional information responsive to a *Tuck* analysis to determine whether Lolo is sufficiently independent of Missoula to merit a first local service preference, or whether it should be credited with all of the authorized aural services in the Missoula urbanized area.

⁴Citing *Semora, North Carolina*, 5 FCC Red 934 (1990), and *Trade, Tennessee and Beach Mountain, North Carolina*, 6 FCC Red 5835 (1991).

⁵The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

⁶According to our engineering analysis, the petitioner's proposed site is approximately 1.6 kilometers (1 mile) from the nearest border of the Missoula Urbanized Area. The city of Lolo is located 2.8 kilometers (1.7 miles) from the closest boundary of the Missoula Urbanized Area.

⁷See *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc.* ("KFR")⁷, 5 FCC Red 3222 (1990), and *Faye and Richard Tuck* ("Tuck"), 3 FCC Red 5374 (1988). In *KFR* and *Tuck*, the Commission clarified the type of evidence to consider in determining whether a suburban community deserves a first local service preference by relying on three factors: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and the interdependence of the suburban community with the central city.

5. In view of the above, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we do believe that the proposal warrants consideration since the allotment of Channel 248C3 to Lolo, Montana, could provide that community with its first local aural transmission service, unless demonstrated otherwise, and would not deprive Wallace, Idaho, of local service. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 248C3 at Lolo, Montana, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 248C3 can be allotted to Lolo, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, at the petitioner's specified site located 14.5 kilometers (9 miles) north of the community at coordinates 46-53-07 and 114-06-30. Additionally, as Lolo, Montana, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain the concurrence of the Canadian government to the proposal.

7. Accordingly, 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 communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Wallace, Idaho	248C2, 264C	264C
Lolo, Montana	--	248C3

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 November 10, 1997, and reply comments on or before November 25, 1997, 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:

Dale A. Ganske, President
Hawkeye Radio Properties, Inc.
5546-3 Century Avenue
Middleton, WI 53562

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

11. For further information concerning this proceeding, contact Nancy Joyner, 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 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

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained 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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 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 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 Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.