

FCC MAIL SECTION

Federal Communications Commission

DA 97-2749

JAN 12 10 20 AM '98

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

DISTRICT

In the Matter of )

Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Breckenridge and Graford, Texas) )

MM Docket No. 97-251  
RM-9199

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: December 17, 1997**

**Released: January 9, 1998**

Comment Date: March 2, 1998  
Reply Comment Date: March 17, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Big Country Radio, Inc. ("petitioner"), permittee of Station KLXK(FM), Channel 228C2, Breckenridge, Texas, seeking the substitution of Channel 228C3 for Channel 228C2; the reallocation of Channel 228C3 from Breckenridge to Graford; and, the modification of Station KLXK(FM)'s construction permit to specify Graford as its community of license. Petitioner states it will apply for Channel 228C3 at Graford, if allotted.

2. Petitioner seeks modification of Station KLXK(FM)'s construction permit pursuant to 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.<sup>1</sup> In support of its proposal, petitioner states that Graford is an incorporated community with a 1990 U.S. Census population of 561 persons. It submits that the community has its own city government consisting of a mayor, five city council members, and a city secretary. Graford has its own police department, fire department, and city utilities. Petitioner states that Graford

<sup>1</sup> See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989) ("Community of License"), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

has five churches and other community organizations, such as; the Lion's Club, the Masonic Lodge, and the Order of Eastern Star. Petitioner contends that the allotment of Channel 228C3 to Graford is in the public interest as it would provide a first local aural transmission service to Graford and will not deprive Breckenridge if its only existing service as it will continue to be served by AM Station KROO. Furthermore, petitioner submits that the operation at Graford would provide service to an additional 27,013 persons that would receive service from Station KLXK(FM). It notes that the majority of the loss area will continue to be served by multiple aural services.

3. We believe petitioner's proposal warrants consideration since it could provide Graford with its first aural transmission service. Nonetheless, since petitioner seeks to relocate its transmitter site there will be areas which will lose service as well as areas which will gain new reception service. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weight independently against the service benefits that may result from reallocating a channel from one community to another." See Change of Community MO&O, 5 FCC Rcd at 7097. Therefore, although petitioner has provided some information in its proposal concerning increases in service, it is requested that petitioner provide more specific data regarding areas and populations which will gain and lose service if Channel 228C2 is downgraded to Channel 228C3 and reallocated to Graford. The study should also indicate the number of reception services which are available within both the loss and gain areas.

3. Channel 228C3 can be allotted to Graford consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules with a site restriction of 21.7 kilometers (13.5 miles) northwest to accommodate petitioner's desired site.<sup>2</sup> In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 228C3 at Graford or require petitioner to demonstrate the availability of an additional equivalent class channel at Graford.

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 communities listed below, to read as follows:

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<sup>2</sup> The coordinates for Channel 228C3 at Graford are 33-06-51 NL and 98-19-57 WL.

City	Channel No.	
	Present	Proposed
Breckenridge, Texas	228C2	--
Graford, Texas	--	228C3

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 March 2, 1998, and reply comments on or before March 17, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Ann Bavender  
Fletcher, Heald & Hildreth, P.L.C.  
11th Floor  
1300 North 17th Street  
Rosslyn, Virginia 22209-3801  
(Counsel for petitioner)

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 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.

8. 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 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**

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**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 protection. 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 proposals 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, DC 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, NW, Washington, DC.