

FCC MAIL SECTION

Federal Communications Commission

DA 98-404

MAR 10 8 24 AM '98

DISPATCH

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

|                                |   |                     |
|--------------------------------|---|---------------------|
| In the Matter of               | ) |                     |
|                                | ) |                     |
| Amendment of Section 73.202(b) | ) | MM Docket No. 98-27 |
| Table of Allotments,           | ) | RM-9188             |
| FM Broadcast Stations.         | ) |                     |
| (Munds Park, Arizona)          | ) |                     |

NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 1998

Released: March 6, 1998

Comment Date: April 27, 1998

Reply Comment Date: May 12, 1998

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by Dancing Terrapin Broadcasting ("petitioner") requesting the allotment of FM Channel 291A to Munds Park, Arizona, as that community's first local aural transmission service. Petitioner stated its intention to apply for Channel 291A if it is allotted to Munds Park, Arizona, as requested.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., *Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). Munds Park is not listed in the U.S. Census.<sup>1</sup> In support of the proposal, petitioner states that Munds Park has a post office (zip code 86017), church, several service stations, restaurants, businesses, a newspaper, fire department, motels, RV parks, sanitation and maintenance departments, a country club and a golf course. Further, petitioner asserts that as the closest FM allotment to Munds Park is in Flagstaff, Arizona, located 11 kilometers (6.8 miles) distant, the health and safety of the community would be enhanced by having a local communications outlet for the dissemination of information to Munds Park and the surrounding areas concerning emergency conditions created by frequent severe weather or other health

<sup>1</sup>We do note that Munds Park is listed in the 1998 Rand McNally Commercial Atlas and Marketing Guide ("*Atlas*") with a population of 1,250 (summer population is listed as 3,000). However, geographic location is not sufficient to establish community status. See *Vinville, Mississippi*, 48 FR 5974 (1983).

hazards. Although petitioner alleges that Munds Park contains numerous evidence of community indicia, it has not provided documented evidence to reflect those entities' nexus with that locality, as opposed to other areas. This is a critical deficiency as Commission policy is to reject assertions of community status where a link has not been demonstrated between the political, social, and commercial organizations and the community in question. See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein. Therefore, petitioner should present the Commission with sufficient information to demonstrate that Munds Park is an identifiable population grouping with businesses and community organizations that identify themselves with that community. See *Garrison, Kentucky*, 6 FCC Rcd 1428 (1991).

3. In consideration of the above, we believe the public interest would be served by seeking further information on the petitioner's proposal as the requested allotment of Channel 291A could provide a first local aural transmission service to Munds Park if it is ascertained to be a community for allotment purposes.

4. A staff engineering review has determined that Channel 291A can be allotted to Munds Park consistent with the provisions of Section 73.207(b)(1) of the Commission's Rules, utilizing the community reference coordinates at 34-56-44 and 111-38-22.

5. In view of the interest expressed in providing a first local aural transmission service to Munds Park, Arizona, we will propose to allot Channel 291A to that locality, as requested. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Munds Park, Arizona, as follows:

| <u>City</u>         | <u>Channel No.</u> |                 |
|---------------------|--------------------|-----------------|
|                     | <u>Present</u>     | <u>Proposed</u> |
| Munds Park, Arizona | --                 | 291A            |

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 April 27, 1998, and reply comments on or before May 12, 1998, 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:

Gary A. Witte  
 President, Dancing Terrapin Broadcasting  
 77 Gunsight Hills Drive  
 Sedona, AZ 86351

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.

9. 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(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 Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.