FCC MAIL SECTION

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
	)	
(Mountainaire, Arizona)	)	MM Docket No. 99-202
	)	RM-9620
	)	
(Dove Creek, Colorado)	)	MM Docket No. 99-203
	)	RM-9621
	)	
(Grand View, Idaho)	)	MM Docket No. 99-204
	)	RM-9623
	)	
(Hazelton, Idaho)	)	MM Docket No. 99-205
	)	RM-9624
	)	
(Kimberly, Idaho)	)	MM Docket No. 99-206
	)	RM-9625
	)	
(Kuna, Idaho)	)	MM Docket No. 99-207
	)	RM-9626
	)	
(Melba, Idaho)	)	MM Docket No. 99-208
	)	RM-9627
	)	
(Buras, Louisiana)	)	MM Docket No. 99-209
	)	RM-9628
	)	
(Flagstaff, Arizona)	)	MM Docket No. 99-210
	)	RM-9629
	)	
(Winona, Arizona)	)	MM Docket No. 99-211
	)	RM-9630
	)	
(Amelia, Louisiana)	)	MM Docket No. 99-212
	)	RM-9640
	)	

(Kootenai, Idaho)) MM Docket No. 99-213
) RM-9641

NOTICE OF PROPOSED RULE MAKING

Adopted: May 26, 1999 Released: June 4, 1999

Comment Date: July 26, 1999
Reply Comment Date: August 10, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

(1) MM Docket No. 99-202, RM-9620

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 293A to Mountainaire, Arizona, as that locality's first local aural transmission service.

Community	Present	Proposed
Mountainaire, Arizona	--	293A

Coordinates: 35-13-00 NL; 111-42-01 WL

Additional Information: The proposed allotment requires a site restriction 14.9 kilometers (9.3 miles) north to avoid a short spacing to Station KPPV(FM), Channel 294C2, Prescott, Arizona, at coordinates 34-29-25 NL; 112-32-00 WL. Additionally, as Mountainaire is not incorporated nor listed in the U.S. Census, the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd. 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd. 10 FCC Rcd 9831 (1995). Petitioner is requested to provide additional information regarding the attributes of Mountainaire, Arizona, consistent with the above guidelines.

FCC Contact: Nancy Joyner, (202) 418-2180

(2) MM Docket No. 99-203, RM-9621

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 273C3 to Dove Creek, Colorado, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Dove Creek, Colorado	--	273C3

Coordinates: 35-45-54 NL; 108-54-18 WL

Additional Information: No site restriction is required for the proposed allotment.

FCC Contact: Nancy Joyner (202) 418-2180

(3) **MM Docket No. 99-204, RM- 9623**

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 228A to Grand View, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Grand View, Idaho	--	228A

Coordinates: 42-53-47 NL; 116-05-30 WL

Additional Information: This proposal requires a site restriction 10.2 kilometers (6.3 miles) south to avoid short spacings to Station KZMG(FM), Channel 226C, New Plymouth, Idaho, at coordinates 43-45-19 NL; 116-05-52 WL, and to Station KBXL(FM), Channel 231C, Caldwell, Idaho, at coordinates 43-45-14 NL; 116-06-08 WL.

FCC Contact: Nancy Joyner, (202) 418-2180

(4) **MM Docket No. 99-205, RM-9624**

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 232C3 to Hazelton, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Hazelton, Idaho	--	232C3

Coordinates: 42-35-54 NL; 114-07-54 WL

Additional Information: No site restriction is required for the proposed allotment.

FCC Contact: Nancy Joyner, (202) 418-2180

(5) MM Docket No. 99-206, RM-9625

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 291C3 to Kimberly, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Kimberly, Idaho	--	291C3

Coordinates: 42-30-22 NL; 114-21-45 WL

Additional Information: The proposed allotment requires a site restriction 3 kilometers (1.9 miles) south to avoid a short spacing to vacant Channel 294C, Hailey, Idaho, at coordinates 43-22-03 NL; 114-12-30 WL.

FCC Contact: Nancy Joyner, (202) 418-2180

(6) MM Docket No. 99-207, RM-9626

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 247C to Kuna, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Kuna, Idaho	--	247C

Coordinates: 43-04-26 NL; 116-59-54 WL

Additional Information: The proposed allotment requires a site restriction 66 kilometers (41 miles) southwest to avoid short spacings to Station KKGL(FM), Channel 245C, Nampa, Idaho, at coordinates 43-45-19 NL; 116-05-52 WL; and to Station KQFC(FM), Channel 250C, Boise, Idaho, at coordinates 43-45-12 NL; 116-06-08 WL. Although the Kuna proposal complies with Section 73.207(b) of the Commission's Rules, and would place a 60 dBu contour over the entire Boise City, Idaho, urbanized area, we question whether, at the restricted site, the requirements of Section 73.315 could be met. At the rule making level, a Class C allotment is assumed to provide 70 dBu service to the entire community where the transmitter is located no more than 67.7 kilometers (42 miles) from the community. As the instant proposal would place the transmitter for Channel 247C near the outer limits for a Class C station, that site might prove difficult to provide city grade coverage due to intervening terrain factors. Our analysis indicates that in order to clear intervening terrain obstructions, the placement of a 656 meter tower at 1,568 meters above ground level at the referenced site would be required to comply with the coverage requirements of Section 73.315(b). Therefore, petitioner should provide additional engineering showings in its comments to demonstrate that its proposal could comply with the requirements of Section 73.315 of the Commission's Rules at the restricted site.

FCC Contact: Nancy Joyner, (202) 418-2180

(7) MM Docket No. 99-208; RM-9627

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 260C2 to Melba, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Melba, Idaho	--	260C2

Coordinates: 43-08-21 NL; 116-45-25 WL

Additional Information: The proposed allotment requires a site restriction 31.8 kilometers (19.8 miles) southwest to avoid short spacings to Station KWEI-FM, Channel 258C1, Fruitland, Idaho, at coordinates 44-00-58 NL; 116-24-15 WL; and to Station KQXR(FM), Channel 262C1, Payette, Idaho, at coordinates 43-49-31 NL; 116-30-29 WL. Additionally, a site restriction of the magnitude required to accommodate Channel 260C2 at Melba, Idaho, would place the transmitter near the outer limits for a Class C2 station (32.6 kilometers (20.2 miles) is the maximum allowable distance for the provision of a 70 dBu signal by a Class C2 station). Therefore, petitioner should provide additional engineering showings in its comments to demonstrate that its proposal could meet the coverage requirements of Section 73.315 of the Commission's Rules.

FCC Contact: Nancy Joyner, (202) 418-2180

(8) MM Docket No. 99-209; RM-9628

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 279C2 to Buras, Louisiana, as that locality's first commercial FM

allotment.

Community	Present	Proposed
Buras, Louisiana	--	279C2

Coordinates: 29-18-15 NL; 89-32-00 WL

Additional Information: The proposed allotment requires a site restriction 6 kilometers (3.7 miles) south to avoid a short spacing to Station WHER(FM), Channel 279C, Hattiesburg, Mississippi, at coordinates 31-31-37 NL; 89-08-07 WL. Additionally, a staff engineering analysis reveals that the restricted site required to accommodate the proposed allotment of Channel 279C2 to Buras appears to be in marshlands. Therefore, the petitioner should address this issue in its comments and provide proof that a site is available for tower construction at Buras. We also note that although the U.S. Census Bureau recognizes the combined communities of Buras-Triumph, Louisiana, as a Census Designated Place containing a combined population of 3,702, the instant proposal relates only to Buras, which is credited with a population of 1,600 people in the 1998 Rand McNally Commercial Atlas and Marketing Guide.

FCC Contact: Nancy Joyner, (202) 418-2180

(9) MM Docket No. 99-210; RM-9629

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 279C3 to Flagstaff, as that community's fifth local FM transmission service.

Community	Present	Proposed
Flagstaff, Arizona	225C, 230C, 248C, 261C2	225C, 230C, 248C, 261C2, 279C3

Coordinates: 35-17-19 NL; 111-38-26 WL

Additional Information: The proposed allotment requires a site restriction 10.6 kilometers (6.6 miles)

north to avoid a short spacing to Station KBZG(FM), Channel 282C, Payson, Arizona, at coordinates 34-25-48 NL; 111-30-16 WL. The restricted site will also negate a 2.8 kilometer short spacing to Station KPBZ(FM), Chino Valley, Arizona, at coordinates 34-42-52 NL; 112-31-33 WL; as well as a 3.1 kilometer short spacing to Station KAFF-FM, Channel 225C, Flagstaff, Arizona, at coordinates 34-58-07 NL; 111-30-24 WL. Additionally, we also received a proposal filed by Mark S. Haughwout ("Haughwout") requesting the allotment of Channel 279A to Flagstaff. However, in the interest of providing effective and efficient management of the frequency spectrum, and as a means of providing the public with the widest coverage area broadcast facility possible, the Commission will allot the highest class channel requested to a community that meets the technical provisions of our rules. Therefore, as it has been demonstrated that a Class C3 channel is available to Flagstaff, we will not consider a Class A allotment. Rather, Haughwout's request will be considered as comments in support of the requested allotment of Channel 279 at Flagstaff.

FCC Contact: Nancy Joyner, (202) 418-2180

(10) MM Docket No. 99-211; RM-9630

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 242C3 to Winona, Arizona, as that locality's first local aural transmission service.

Community	Present	Proposed
Winona, Arizona	--	242C3

Coordinates: 35-12-12 NL; 111-24-24 WL

Additional Information: The proposed allotment requires a site restriction 1.8 kilometers (1.1 miles) northwest to avoid a short spacing to Station KRFM(FM), Channel 243C, Show Low, Arizona, at coordinates 34-12-20 NL; 109-56-26 WL. Winona is not incorporated nor listed in the U.S. Census. In such instances the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd., 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy

and Rules Div. 1990), aff'd. 10 FCC Rcd 9831 (1995). Other examples of objective indications of community status include receipts from local businesses, photographs of local churches and/or schools. Another indication of community status is whether the residents function as and conceive of themselves as residents of a community around which their interests coalesce. See Mighty-Mac Broadcasting Co., 58 RR 2d 599, 603 (1985); North Naples, Florida, 41 RR 2d 1549 (1977). Although the petitioner states that Winona has many retail businesses as it is located on Interstate 40 leading to Flagstaff, and has a church, school and civic organizations, he did not provide documented evidence to identify those entities nor shown that they are intended to serve Winona as opposed to other areas. See Coker, Alabama, 43 RR 2d 190, 193 (1978). Therefore, petitioner is requested to provide additional information regarding the attributes of Winona, Arizona, consistent with the guidelines set forth above.

FCC Contact: Nancy Joyner, (202) 418-2180

(11) MM Docket No. 99-212; RM-9640

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 249C3 to Amelia, Louisiana, a Census Designated Place, as that locality's first local aural transmission service.

Community	Present	Proposed
Amelia, Louisiana	--	249C3

Coordinates: 29-30-21 NL; 91-03-46 WL

Additional Information: The proposal requires a site restriction 18.4 kilometers (11.4 miles) south of the community to avoid a short spacing to the licensed site of Station WDGL(FM), Channel 251C, Baton Rouge, Louisiana, at coordinates 30-21-58 NL; 91-12-47 WL. Additionally, a staff analysis indicates that the site specified to accommodate requested Channel 249C3 at Amelia is located in a large swampy area. As a result we find sufficient evidence exists to question whether there is a suitable site within the geographic area that is suitable for the construction of a radio tower. Therefore, petitioner is requested to provide a showing to demonstrate that a suitable fully spaced area exists to locate a transmitter tower to accommodate requested Channel 249C3 at Amelia.

FCC Contact: Nancy Joyner, (202) 418-2180

(12) MM Docket No. 99-213; RM-9641

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr., President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 294A to Kootenai, Idaho, an incorporated community, as that locality's first local aural transmission service.

Community	Present	Proposed
Kootenai, Idaho	--	294A

Coordinates: 48-18-37 NL; 116-30-45 WL

Additional Information: The proposed allotment of Channel 294A to Kootenai, Idaho, requires no site restriction. However, as Kootenai is located within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the Canadian government to the proposed allotment is required.

FCC Contact: Nancy Joyner, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. 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 in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before July 26, 1999, and reply comments on or before August 10, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of

Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 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).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket 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 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, 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 Information Center (Room CY-A257) at its headquarters, 445 Twelfth Street, SW., Washington, D.C.