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OFFICE OF SECRETARY

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.	)	
(McCook, Nebraska)	)	MM Docket No. 00-82
	)	RM-9841
	)	
(Butte Falls, Oregon)	)	MM Docket No. 00-83
	)	RM-9849
	)	
(Jacksonville, Georgia)	)	MM Docket No. 00-84
	)	RM-9855
	)	
(Las Vegas, New Mexico)	)	MM Docket No. 00-85
	)	RM-9868
	)	
(Vale, Oregon)	)	MM Docket No. 00-86
	)	RM-9869
	)	
(Brightwood, Oregon)	)	MM Docket No. 00-87
	)	RM-9870
	)	
(Dillsboro, North Carolina)	)	MM Docket No. 00-88
	)	RM-9871
	)	
(Waynesboro, Georgia)	)	MM Docket No. 00-89 ✓
	)	RM-9872

NOTICE OF PROPOSED RULE MAKING

Adopted: May 10, 2000 Released: May 19, 2000

Comment Date: July 10, 2000
Reply Comment Date: July 25, 2000

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. We believe that each proposal warrants further consideration because it complies with our technical requirements and could serve the public interest.

2. This multiple docket Notice of Proposed Rule Making is issued in response to the 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 numbers 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. 00-82, RM-9841

Petitioner: McCook Radio Group, LLC

David M. Stout, Managing Member
1811 West "O" Street
McCook, NE 69001
(Petitioner)

Proposal: Allot Channel 280C2 to McCook, Nebraska, as the community's fifth or sixth local commercial FM service.[1]

Community	Present	Proposed
McCook, Nebraska	230C2, 241C, 253C1[2], 287C1	230C2, 241C, 253C1, 271C1, 280C2, 287C1

Coordinates: 40-12-18 NL; 100-37-36 WL.

Additional Information: Channel 280C2 can be allotted to McCook without the imposition of a site restriction.

FCC Contact: Leslie Shapiro, (202) 418-2189

(2) MM Docket No. 00-83, RM-9849

Petitioner: Butte Falls Radio

James S. Bumpous, Partner
13915 Lakeview Drive
Austin, TX 78732

Proposal: Allot Channel 255A to Butte Falls, Oregon, as the community's first local aural service.

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[1] McCook Radio Group, LLC, is also the petitioner in MM Docket 00-6 proposing the allotment of Channel 271C1 to McCook. See, 15 FCC Rcd 738 (2000). Petitioner, in each petition, stated its intention to apply for the requested channel.

[2] Channel 253C1 was substituted for Channel 253C2 at McCook pursuant to the one-step application (BMPH-19990301IC) of McCook Media Association, the permittee of Station KJKI.

Community	Present	Proposed
Butte Falls, Oregon	--	255A

Coordinates: 42-33-05 NL; 122-35-18 WL.

Additional Information: Channel 255A can be allotted to Butte Falls with a site restriction of 1.9 kilometers (1.2 miles) northwest to avoid a short-spacing to Station KAGO-FM, Channel 258C1, Klamath Falls, OR.

FCC Contact: Leslie Shapiro, (202) 418-2189

(3) MM Docket No. 00-84, RM-9855

Petitioner: Clyde and Connie Lee Scott, d/b/a EME Communications

293 JC Saunders Road
Moultrie, GA 31768

Proposal: Allot Channel 272A to Jacksonville, GA, as the community's first local aural service.

Community	Present	Proposed
Jacksonville, GA	--	272A

Coordinates: 31-51-54 NL; 83-06-16 WL.

Additional Information: Channel 272A can be allotted to Jacksonville, GA, with a site restriction of 13.5 kilometers (8.4 miles) northwest to avoid short-spacings to Station WZAT, Channel 271C, Savannah, GA, Station WBGA, Channel 273C1, Waycross, GA, and Station WYSC, Channel 274A, McRae, GA.

FCC Contact: Leslie Shapiro, (202) 418-2189

(4) MM Docket No. 00-85, RM-9868

Petitioner: Sangre de Christo Broadcasting Co., Inc.

Ernest T. Sanchez
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
(Counsel to petitioner)

Proposal: Allot Channel 224A to Las Vegas, NM, as the community's fifth or sixth local commercial FM service.[3]

Community	Present	Proposed
Las Vegas, New Mexico	244A, 251C, 264C3 268A, 275A	224A, 244A, 251C, 264C3 268A, 275A

Coordinates: 35-36-00 NL; 105-13-00 WL.

Additional Information: Channel 224A can be allotted to Las Vegas without the imposition of a site restriction.

FCC Contact: Leslie Shapiro, (202) 418-2180

(5) MM Docket No. 00-86, RM-9869

Petitioner: New West Broadcasting

Robin B. Thomas, President
New West Broadcasting
1001 Weatherby Drive
Cheyenne, WY 82007

Proposal: Allot Channel 288C to Vale, Oregon, as the community's first local aural service.

Community	Present	Proposed
Vale, Oregon	--	288C

Coordinates: 44-00-06 NL; 117-21-32 WL.

Additional Information: Channel 288C can be allotted to Vale with a site restriction of 9.6 kilometers (6.0 miles) west to avoid short-spacings to Station KJOT, Channel 286C, Boise, Idaho, and Station KCIX, Channel 290C, Garden City, Idaho.

FCC Contact: Leslie Shapiro, (202) 418-2180

(6) MM Docket No. 00-87, RM-9870

Petitioner: Muddy Broadcasting Company

[3] The Commission also has before it the proposal of BK Radio to substitute Channel 268C3 for Channel 268A at Las Vegas, NM, reallotment Channel 268C3 to Pecos, NM, and modify its construction permit (19960829MH) accordingly. See, MM Docket 00-5, 15 FCC Rcd 732 (2000).

Dawn M. Sciarrino
Clifford M. Harrington
Paul A. Cicelski
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037
(Counsel to petitioner)

Proposal: Allot Channel 251C3 to Brightwood, Oregon, as the community's first local aural service.

Community	Present	Proposed
Brightwood, OR	--	251C3

Coordinates: 45-17-20 NL; 121-47-04 WL.

Additional Information: Channel 251C3 can be allotted to Brightwood with a site restriction of 20.6 kilometers (12.8 miles) southeast to avoid a short-spacing to Station KUPL-FM, Channel 254C1, Portland, OR.

FCC Contact: Leslie Shapiro, (202) 418-2189

(7) MM Docket No. 00-88, RM-9871

Petitioner: Sutton Radiocasting Corporation

John F. Garziglia
Patricia M. Chuh
Pepper & Corazzini, LLP
1776 K Street, N.W., Suite 200
Washington, D.C. 20006-2334
(Counsel to petitioner)

Proposal: Allot 237A to Dillsboro, North Carolina, as the community's first local aural service.

Community	Present	Proposed
Dillsboro, North Carolina	--	237A

Coordinates: 35-18-21 NL; 83-09-50 WL.

Additional Information: Channel 237A can be allotted to Dillsboro with a site restriction of 10.7 kilometers (6.6 miles) southeast to avoid a short-spacing to Station WIKQ, Channel 235C, Greeneville, TN, and Station WYFC, Channel 237A, Clinton, TN.

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 a community as a geographically

identifiable population grouping. 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, Pleasant Dale, Nebraska, 14 FCC Rcd 18893 (1999), Avon, North Carolina, 14 FCC Rcd 3939 (1999) and Thermal, California, 15 FCC Rcd 2100 (2000). We recognize that Dillsboro is listed in the 1990 U.S. Census as a village and attributed with a population of 95 people. However, we may find that a population grouping of 95 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. In this case, we have found that its zip code (28779) is listed under the community of Sylva and it does not have its own post office. See, Searles Valley, California, 3 FCC Rcd 5221 (1988) and Naples, Florida, 41 RR 2d 1549 (1971). In addition, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See, Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Petitioner should show that any community organizations, civic groups, etc., which exist have a nexus with Dillsboro.

FCC Contact: Leslie Shapiro, (202) 418-2189

(8) MM Docket No. 00-89, RM-9872

Petitioner: SSR Communications Incorporated

C. Michael Adkins
5116 Wesleyan Circle
Macon, Georgia 31210

Proposal: Allot Channel 225A to Waynesboro, Georgia, as the community's third local FM service.

Community	Present	Proposed
Waynesboro, Georgia	265A, 296C3	225A, 265A, 296C3

Coordinates: 33-06-23 NL; 82-00-14 WL.

Additional Information: The allotment of Channel 225A at Waynesboro requires a site restriction of 2.0 kilometers (1.3 miles) northeast to avoid a short-spacing to Station WKKZ, Channel 224C2, Dublin, Georgia, and Station WEAS-FM, Channel 226C1, Savannah, Georgia.

FCC Contact: Leslie Shapiro, (202) 418-2189

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 10, 2000, and reply comments on or before July 25, 2000, 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 any filing should be served on the petitioner, or its counsel or consultant, 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 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.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of these restricted notice and comment rule making proceedings, 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 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, 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, at its headquarters, 445 12th Street, S.W., Washington, D.C.