

FEDERAL MAIL SECTION

Federal Communications Commission

DA 00-2017

SEP 1 11 25 AM '00

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. <u>00-158</u> ,
Table of Allotments,	)	RM-9921
FM Broadcast Stations.	)	
(Alamo Community, New Mexico)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: August 23, 2000**

**Released: September 1, 2000**

Comment Date: October 23, 2000

Reply Comment Date: November 7, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Alamo Navajo School Board, Inc. ("petitioner"), requesting the allotment of Channel 298A, as a noncommercial educational channel, to Alamo Community, New Mexico, as its second local aural and first local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner states that Alamo Community is the governmental, educational and commercial center of the Alamo Navajo Indian Reservation. It states that the Alamo Navajo Reservation is an isolated reservation located in west central New Mexico and that the station will serve the residents of the reservation through community-oriented programming, including programming in the Alamo native language. Petitioner is also the licensee of daytime-only noncommercial educational ("NCE") AM Station KABR, which is Alamo Community's only other local aural service. It states that the allotment of Channel 298A will enable it to provide reliable fulltime service to the community.

3. We are unable to locate center city coordinates for Alamo Community in order to determine whether the proposed allotment would comply with the signal coverage requirements contained in Section 73.315 of the Commission's Rules.<sup>1</sup> Therefore, we also request that petitioner provide, in its comments, the center city coordinates of Alamo Community and a study showing that the proposed allotment would provide a 70 dBu signal over the entire community. Based on the reference coordinates specified by petitioner, it appears that Channel 298A can be allotted to Alamo Community in compliance with the Commission's minimum distance separation requirements. Mexican concurrence in the allotment must be obtained since Alamo is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

<sup>1</sup> Petitioner specified coordinates 34-25-01 North Latitude and 107-30-04 West Longitude to show compliance with the Commission's minimum distance separation requirements. These are the coordinates for AM Station KABR, licensed to petitioner.

4. We also request further information concerning the reservation of Channel 298A for noncommercial educational use. We request that petitioner clarify whether or not a channel within the reserved portion of the spectrum is unavailable for allotment at Alamo Community because of the existence of allotments to Mexican communities or interference from a Channel 6 TV allotment. If neither of these conditions exist, however, petitioner may still seek the allotment and reservation of Channel 298A. The Commission recently amended Section 73.202(a)(1) of the rules concerning the reservation of a commercial channel for noncommercial use.<sup>2</sup> If no channel is available for allotment within the reserved portion of the band, for other reasons, a petitioner may now request the reservation of a commercial channel by demonstrating that the need for a noncommercial educational station is greater than the need for a commercial station. This request could include a showing that:

(1) The NCE radio proponent is technically precluded from using the reserved band by existing stations or previously filed applications or an NCE television proponent shows that there is no reserved channel assigned to the community AND

(2) The NCE proponent would provide a first or second radio or television NCE service to 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour (radio) or Grade B contour (TV). New NCE service to fewer than 2,000 people would be considered insignificant for purposes of this determination.<sup>3</sup>

5. We believe petitioner's proposal warrants further consideration since it could provide Alamo Community with its first local fulltime aural service. 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 community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Alamo Community, New Mexico	--	298A

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.

<sup>2</sup> See, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd 7386 (2000), recon. pending.

<sup>3</sup> If a petitioner seeks the reservation of a commercial channel in an area not already served by two commercial channels, the Commission delegated to the staff, on a case-by-case basis, consideration of whether commercial or NCE service is most needed.

7. Interested parties may file comments on or before October 23, 2000, and reply comments on or before November 7, 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 such comments should be served on the petitioner, or its counsel or consultant, as follows:

Burton Apache, President  
The Alamo Navajo School Board, Inc. 800 Wellesley N.E.  
P.O. Box 907  
Magdalena, NM 87825  
(Petitioner)

Don Davis  
Albuquerque, NM 87106  
(Technical consultant to petitioner)

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

9. For further information concerning this proceeding, contact Leslie K. Shapiro, 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 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.