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Federal Communications Commission

DA 02-207

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

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JAN 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Okmulgee and Glenpool, Oklahoma))
)

MM Docket No. 02-15
RM-10364

NOTICE OF PROPOSED RULE MAKING

Adopted: January 16, 2002

Released: January 25, 2002

Comment Date: March 18, 2002
Reply Comment Date: April 2, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed by Shamrock Communications, Inc. ("petitioner"), licensee of Station KTSO(FM), Channel 231C1, Okmulgee, Oklahoma, proposing the reallocation of Channel 231C1 from Oklahoma to Glenpool, Oklahoma. Petitioner also requests the modification of Station KTSO(FM)'s license to reflect Glenpool as its new community of license. Petitioner states its intention to apply for the channel, if reallocated to Glenpool.

2. The proposal is filed pursuant to 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. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).¹ In support of its proposal, petitioner states that Glenpool is an incorporated community with a 2000 U.S. Census population of 8,123 persons. It has its own post office and zip code. Glenpool has its own city government, including a police department and volunteer fire department. Glenpool also has a school district (Glenpool Public School District), public library, churches, and businesses that identify themselves as part of the community of Glenpool, including "Glenpool Eyecare," "Glenpool Auto Sales," "Glenpool Furniture," "Glenpool Building and Realty," "Glenpool Health Care Center," "Glenpool Chiropractic

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

Clinic,” and “Glenpool Flowers and Gifts.” Since petitioner does not seek to relocate its transmitter site, a gain and loss area study is not required. Additionally, petitioner advises that 70 dBu signal of Station WTSO(FM) currently covers more than 69% of the Tulsa Urbanized Area and will continue to do so since a site change is not requested. Therefore, a Tuck analysis is not applicable.² Moreover, Okmulgee (population 13,022) has more than five reception services and is considered to be well-served. Petitioner is requested to provide the overall public interest benefits that would be derived from the reallocation.

3. We believe this proposal warrants consideration since the reallocation would provide a first local aural transmission service to Glenpool without depriving Okmulgee of its sole local service.³ An engineering analysis has determined that Channel 231C1 can be reallocated to Glenpool in compliance with the Commission’s minimum distance separation requirements without the imposition of a site restriction at petitioner’s presently licensed site⁴ 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 231C1 at Glenpool, Oklahoma.

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:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Okmulgee, Oklahoma	231C1	---
Glenpool, Oklahoma	--	231C1

5. IT IS ORDERED, That the Secretary shall send a copy of this Notice of Proposed Rule Making by Certified Mail, Return Receipt Requested, to the following:

William R. Lynett, President
 Shamrock Communications, Inc.
 149 Penn Avenue
 Scranton, Pennsylvania 18503
 (Petitioner)

² See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

³ Station KTSO(AM) (day and nighttime service) would remain licensed to the community.

⁴ The coordinates for Channel 231C1 at Glenpool are 35-50-02 North Latitude and 96-07-28 West Longitude.

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 March 18, 2002, and reply comments on or before April 2, 2002, 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 petitioners, or their counsel or consultants, as follows:

Christopher D. Ornelas, Esq.
Wilkinson, Barker, Knauer, LLP
2300 N Street, N.W, Suite 700
Washington, D.C. 20037
(Counsel for 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 Sharon P. McDonald, 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room 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 12th Street, S.W., Washington, D.C.