

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

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In the Matter of )  
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)  
Amendment of Section 73.202(b), ) MB Docket No. 02-69  
Table of Allotments, ) RM-10385  
FM Broadcast Stations. )  
(Jennings and Iowa, Louisiana) )

NOTICE OF PROPOSED RULE MAKING

Adopted: March 25, 2002

Released: March 29, 2002

Comment Date: May 20, 2002

Reply Date: June 4, 2002

By the Assistant Chief, Audio Division

1. The Commission has before it for consideration a Petition for Rule Making filed by Apex Broadcasting, Inc. ("Apex") licensee of Station KJEF-FM, Channel 225C2, Jennings, Louisiana, requesting the reallocation of Channel 225C2 from Jennings, Louisiana to Iowa, Louisiana. Apex requests modification of its license for Station KJEF-FM to specify operation on Channel 225C2 at Iowa, Louisiana. Apex indicated that it would file an application for Channel 225C2 at Iowa if the channel is allotted to the community.

2. Apex filed its request 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 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Apex contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Iowa (population 2,663), with its first local service while not depriving Jennings, Louisiana (population 10,986), of its own local service as Station KJEF-AM is licensed to Jennings. According to Apex, the proposal will provide service to 226,082 people in 8,560 square kilometers. Apex points out that Iowa, located in the eastern portion of Calcasieu Parish, Louisiana, is designated as a city by the U.S. Census of Louisiana and should be considered as a community for allotment purposes. Apex

states that Iowa has a population of 2,663 people, is governed by a mayor and five member board of Alderman, has its own volunteer Fire Department and an eight person Police force. Further, the city provides water, sewer and trash pickup service to its residents, has a local library and its schools provide classes for grades first through twelfth. In addition, there are numerous businesses and churches in the community.

3. We believe that Apex's proposal warrants consideration since the reallocation of Channel 225C2 could provide the community of Iowa with its first local broadcast service while not depriving Jennings of its sole local aural service. A staff engineering analysis indicates, using Apex's proposed site 16.1 kilometers (10 miles) south of the community, that the channel can be allotted to Iowa in compliance with the Commission's spacing requirements and that city grade coverage will be provided to the community. From this site, our analysis shows that the loss area of Channel 225C2 at Jennings contains 34,777 people in 2,046 square kilometers while the gain area for Channel 225C2 at Iowa contains 64,422 people in 2,249 square kilometers for a net gain of 29,645 people in 203 square kilometers. We further show that the loss area contains an area of 29 square kilometers that will receive only four full-time services which is unpopulated and an area of 460 square kilometers containing 310 people that will receive only three full-time services. The remainder of the loss area is served by at least five full-time reception services. While Station KJEF-FM, Jennings, Louisiana, at its present licensed site does not cover any part of the Lake Charles, Louisiana Urbanized Area, the proposed facility at Iowa would cover 81.9 percent of the Lake Charles Urbanized Area with a 70 dBu signal.

4. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is adjacent to an urbanized area and if its intended operation would place a city grade (70 dBu) signal over 50 percent or more of the urbanized area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.<sup>1</sup> We recognize that Iowa is not located within an urbanized area. Nevertheless, the proposed facility of Channel 225C2 at Apex's specified site would cover 81.9 percent of the Lake Charles Urbanized Area with its 70 dBu contour. Therefore, Apex is requested to provide additional information responsive to a Tuck analysis to determine whether Iowa is sufficiently independent of Lake Charles to merit a first local service preference.<sup>2</sup> Although Apex contends that a Tuck showing is not necessary, we disagree.

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<sup>1</sup> See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

<sup>2</sup> See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). The independent factors set forth in Tuck are 1) the extent to which the community residents work in the larger metropolitan area rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; and 5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified

Apex has specified a theoretical site in its Petition for Rule Making which has been used for all engineering analysis by Commission staff. From that specified site, Station KJEF-FM is moving into the Lake Charles Urbanized Area. Apex has provided three different sites for the reallocation of Channel 225C2, the licensed site, a construction permit site and a theoretical site. We use one site for a channel in a rule making proceeding and in this instance we have used Apex's selected site. We do note that from its licensed site, Apex states that no coverage is provided to the Lake Charles Urbanized Area but from its authorized construction permit site, granted pursuant to Section 73.215 of the Commission's Rules, 92.5 percent of the Urbanized Area will receive coverage from Station KJEF-FM. In this proceeding, Apex is seeking the reallocation of its channel to Iowa and consideration as a first local service. In considering a rulemaking proposal, we require a fully spaced transmitter site and we will not evaluate or otherwise consider a proposal on the basis of Section 73.215 of the Rules.

5. Channel 225C2 can be allotted to Iowa, Louisiana, in compliance with the Commission's minimum distance separation requirements at Apex's specified site. The proposed site is located 16.1 kilometers (10 miles) south of the community of Iowa. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 225C2 at Iowa.

6. In view of the fact that the proposed allotment could provide a first local FM service to Iowa, Louisiana, without depriving Jennings, Louisiana, of its sole local service, we believe it would serve the public interest to solicit comments on the proposal to allot Channel 225C2 to Iowa, Louisiana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Danville and Nonesuch.

Community	Channel No.	
	Present	Proposed
Iowa, Louisiana	-----	225C2
Jennings, Louisiana	225C2	-----

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community and the central city are part of the same advertising market; and 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries.

<sup>3</sup> The coordinates for Channel 225C2 at Iowa are 30-05-17 and 93-00-05.

7. 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.

8. Interested parties may file comments on or before May 20, 2002, and reply comments on or before June 4, 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 petitioner's counsel, as follows:

Erwin G. Krasnow  
Verner, Liipfert, Bernhard,  
McPherson and Hand  
901 15<sup>th</sup> Stree, N.W., Suite 700  
Washington, D. C. 20005

9. 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.

10. For further information concerning this proceeding contact Kathleen Scheuerle, 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 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos, Assistant Chief  
Audio Division  
Office of Broadcast License Policy  
Media Bureau

## 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 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 FCC Reference Information Center at its headquarters, Portals II, 445 Twelfth Street, SW, Room CY-A257, Washington, D. C. 20554.