

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.)
(Chester and Westwood, California))

MM Docket No. 02-242
RM-10382

NOTICE OF PROPOSED RULE MAKING

Adopted: February 20, 2002

Released: March 1, 2002

Comment Date: April 22, 2002

Reply Comment Date: May 7, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed on behalf of Tom F. Huth ("Petitioner"), permittee of Station KTOR(FM), Channel 259A, Chester, California. Petitioner seeks to amend the FM Table of Allotments by reallocating Channel 259A from Chester to Westwood, California, and modifying Station KTOR's authorization accordingly.

2. Petitioner seeks to invoke the provisions of 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.¹ In support of its proposal, Petitioner explains that the requested reallocation from Chester to Westwood is mutually exclusive with Station KTOR's existing authorization.

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992),² by providing Westwood (population 2,017)³ with its first local commercial aural transmission service. An application to serve Westwood on noncommercial educational

¹ 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).

² The 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 is given to priorities (2) and (3)].

³ Population figures for Westwood and Chester are taken from the 1990 U.S. Census. Petitioner notes that the "Westwood" involved in this proceeding is in Lassen County in northern California, whereas there are communities named "Westwood" and Westwood village" in Los Angeles County that are not involved in this petition.

Channel 207C1 has been filed, but there are presently no local services provided to that community. Petitioner asserts that Westwood is a community that has, *inter alia*, its own post office and zip code, 7 churches, a Chamber of Commerce, a Senior Citizens Club, and over 150 commercial establishments.⁴ We note that the reallocation of Channel 259A to Westwood would not deprive Chester (population 2,082) of its sole local transmission outlet because Chester would continue to be served by FM Station KBNF, Channel 255C. Petitioner's proposal will serve 2,678 more people than its present facility at Chester. All persons within the loss area will continue to receive aural services from more than five stations. In the gain area, the proposal will provide a new service to 496 people in 859 square kilometers that currently receive four services.

4. Since Petitioner's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KTOR without entertaining competing expressions of interest in the use of Channel 259A at Westwood, California or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

5. Channel 259A can be allotted to Westwood, California, consistent with the technical requirements of the Commission's Rules, at Petitioner's specified site, utilizing coordinates 40-14-21 NL and 121-1-52 WL. The transmitter site has a restriction of 7.8 kilometers (4.8 miles) south of Westwood, California

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Chester, California	255C, 259A	255C
Westwood, California	--- -----	259A

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 April 22, 2002, and reply comments on or before May 7, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the

⁴ Petitioner relies on listings obtained from the CD-Rom Phone Disc Business Pro, which was published by Digital Directory Assistance, Inc. of Bethesda, Maryland in 1996.

Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Law Office of Dennis J. Kelly
Post Office Box 6648
Annapolis, Maryland 21401-0648

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

10. For further information concerning this proceeding, contact R. Barthen Gorman, 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 that 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 contained 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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 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 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 (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.