

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

In the Matter of)	
Amendment of Section 73.202(b))	MB Docket No. 03-36
Table of Allotments,)	RM-10431
FM Broadcast Stations.)	
(Woodbine, Iowa))	
)	
Reclassification of license)	
of Station KEXL(FM))	
Norfolk, Nebraska)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 5,2003

Released: February 7,2003

Comment Date: March 31,2003

Reply Comment Date: April 15,2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is the petition for rule making filed on behalf of Harrison County Radio ("Petitioner"), requesting the allotment of **FM** Channel 293A at Woodbine, Iowa, as that community's first local aural transmission service. Additionally, to accommodate the proposal consistent with the minimum distance separation requirements of the Commission's Rules,¹ Petitioner's proposal also requires the reclassification of Station KEXL(FM), Channel 294C, Norfolk, Nebraska, to specify operation on Channel 294C0.^{2, 3}

¹ See Section 73.207(b)(1).

² The distance between the required site for requested Channel 293A at Woodbine, Iowa, and Station KEXL's licensed site at Norfolk, Nebraska, is 161.5 kilometers. A minimum distance separation of 165 kilometers is required in this instance. However, if Station KEXL is reclassified to operate as a Class C0 facility, the short spacing issue will be eliminated.

³ Station KEXL currently operates with an effective radiated power of 100 watts at 313 meters height above average terrain ("HAAT"), which is below the minimum Class C antenna height of 450 meters HAAT. Therefore Station KEXL is subject to reclassification as a Class C0 facility pursuant to reclassification procedures adopted by the Commission. See *Second Report and Order* in MM Docket 98-93, (1998 Biennial Regulatory Review—*Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*), 15 FCC Rcd 21649 (2002), and as set forth in Section 1.420(g), note 2, and Section 73.3574, note 4, of the Rules. Pursuant to the requirements set forth in Section 73.3573, note 4, an *Order to Show Cause* ("OSC"), 17 FCC Rcd 8807 (2002), was issued to WJAG, Inc., licensee of Radio Station KEXL, Norfolk, Nebraska, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. No response was received, and therefore, in accordance with the Commission's reclassification procedures noted above, the license for Station KEXL will be reclassified in the context of this proceeding to specify operation on Channel 294C0 instead of Channel 294C at Norfolk, Nebraska.

2. Petitioner advises that Channel 293A is the only Class A channel available for allotment at Woodbine. In further support of its proposal, Petitioner asserts that Woodbine (population 1,564)⁴ has 50 businesses, based upon statistics from the Iowa Retail Sales and Use Tax Report. Further, Woodbine also has its own post office and zip code (51579), school system, and churches. Petitioner urges that the requested allotment of Channel 293A at Woodbine will provide a first local transmission service to that community. Also, Petitioner states that the requested allotment of Channel 293A at Woodbine could provide service to most of Harrison County (population 15,266), which currently has no local radio service assigned to any community therein.

3. We believe the public interest would be served by proposing the allotment of Channel 293A at Woodbine, Iowa, since it could provide a first local aural transmission service at that community. A staff engineering analysis of the proposal has determined the unavailability of any alternate Class A channel or antenna site to accommodate Petitioner's proposal at Woodbine. However, the reclassification of Station KEXL to specify operation on Channel 294C0 at Norfolk, Nebraska, will eliminate any short spacing to requested Channel 293A at Woodbine, Iowa, by utilizing Petitioner's proposed site located 4.3 kilometers (2.7 miles) west of the community at coordinates 41-44-03 NL and 95-45-14 WL.⁵ Operation on Channel 293A from the restricted site specified at Woodbine will also comply with the requirements of Section 73.315 of the Commission's Rules to provide 70 dBu coverage over the entire community.

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

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Woodbine, Iowa	—	293A
Norfolk, Nebraska	294C	294C0 ⁶

5. The Commission's authority to institute rule making proceedings, showings required, cut-off

⁴ Population figures reported herein were taken from the 2000 U.S. Census.

⁵ As indicated above, the minimum distance separation requirements are met based upon the reclassification of Station KEXL (FM), to specify operation on Channel 294C0 rather than Channel 294C at Norfolk, Nebraska, at licensed coordinates 41-55-99 NL and 97-40-49 WL. The site restriction at Woodbine is also required to avoid a short-spacing to Station KIKD, Channel 294C3, Lake City Iowa, at coordinates 42-07-14 NL and 94-48-49 WL, and to Station KIBZ, Channel 292C1, Lincoln, Nebraska, at coordinates 40-43-40 NL and 96-36-50 WL.

⁶ This amendment to the FM Table of Allotments ("FM Table") is necessary to reflect our reclassification of Station KEXL, Norfolk, Nebraska, from Channel 294C to Channel 294C0 pursuant to the reclassification procedures discussed earlier. As does the underlying Woodbine proposal, any counterproposal filed in this proceeding need only protect Station KEXL as a Class C0 allotment.

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.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or **before** March 31, 2003, and reply comments on or before April 15, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW; **TW-A325**, Washington, **D.C.** 20554. Additionally, a copy of such comments should be served on the petitioner, as well as Station KEXL, as follows:

Mr. Russell G. Johnson
Harrison County Radio
1240 Loomis Ave.
Des Moines, IA 50315
(Petitioner)

WJAG, Inc.
Radio Station **KEXL**
309 Braasch Avenue
P.O. Box 789
Norfolk, NE 68701

7. Parties who chose to file by paper must file on original and four copies of each filing. Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving **U.S.** Postal Service mail). **The** Commission's contractor, Visrronix, Inc., will receive hand-delivered or messenger-delivered paper filings for **the** Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries **must** be held together with rubber bands or fasteners. **Any** envelopes must be disposed of **before** entering the building. Commercial overnight mail (other than U.S. Postal Service **Express** Mail or Priority Mail) must be **sent** to 9300 **East Hampton** Drive, Capitol Heights, MD 20743. U.S. Postal **Service** first-class mail, Express Mail, and Priority Mail should be addressed to **445 12th Street**, SW., Washington, D.C. 20554. All filings **must** be addressed to the Commission's Secretary, Office of **the** Secretary, **Federal** Communications Commission.

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.**⁷

9. For further information concerning this proceeding, contact Nancy Joyner, Media Bureau, (202)

⁷ 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.

4 IX-7180. 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
Assistant Chief, Audio Division
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. Cur-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 Communication 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.