

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	M B Docket No. 03-78
Title of Allotment,	)	RM-10684
FM Broadcast Stations.	)	
(Bend and Prineville, Oregon)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19,2003

Released: March 21,2003

Comment Date: May 12,2003

Reply Date: May 27,2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Rule Making tiled by Combined Communications, Inc. ("Petitioner"), licensee of **KTWS-FM**, Bend, Oregon. Petitioner proposes to substitute Channel 253C1 for Channel 252C3 at Bend. To accommodate this proposal, Petitioner also requests substitution of Channel 271C3 for Channel 255C3, a vacant allotment at Prineville, Oregon, and a change in the reference coordinates for that allotment. Petitioner represents that if its request is granted, it will immediately undertake all necessary steps to implement the upgrade in Bend.

2. Petitioner states that the allotment for Station **KTWS-FM** was modified pursuant to the **Report and Order** in MM Docket No. 00-87, wherein Channel 253C3 was substituted for Channel 252C3 at Bend in order to accommodate the "drop-in" allotment of Channel 251C1 to Madras, Oregon. That same **Report and Order** substituted Channel 255C3 in Prineville for the vacant allotment on Channel 254C3. Petitioner's request in the instant proceeding thus represents a further modification of both of the allotment changes made in MM Docket No. 00-87.

3. Petitioner states that the substitution of Channel 253C1 for Channel 253C3 at Bend will serve the public interest by providing Station **KTWS-FM** with the ability to upgrade to a Class C1 facility, thereby providing service to an additional 29,709 persons. The proposal also would provide additional service to 104 individuals who are presently underserved. Petitioner states that no white area would be created by this proposed channel substitution, and that the very small gray area that would be created is unpopulated.

4. Staff analysis has determined that the site change required for the proposed substitution of Channel 271C3 for Channel 255C3 at Prineville would result in a loss area encompassing 1,050.2 square kilometers and 5,404 persons. The change would produce a gain area of 1,057.8 square kilometers and 228

<sup>1</sup> *Brightwood, Madras, Prineville and Bend, Oregon*, 16 FCC Rcd 18,893 (M.M.Bur. 2001), recon. pending.

persons. for a net gain of 7.6 square kilometers and a net loss of 5,176 persons. Petitioner emphasizes, however, that no service is currently provided over Channel 255C3 at Prineville, nor is an application pending for that channel. For that reason, no actual loss of service would result from this proposed change. Petitioner further states that the loss areas in Prineville are either abundantly served by existing services or, in the case of small white areas, do not include any population.

5. This proposal warrants consideration because it would enable Petitioner to upgrade Station KTWS-FM to a CI facility, thereby providing additional aural service to nearly 30,000 persons. A staff engineering analysis determined that Channel 253C1 can be allotted to Bend, OR, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction of 2.6 kilometers (1.6 miles) northwest of Bend.<sup>1</sup> Likewise, Channel 27 IC3 can be allotted to Prineville, OR, in conformity with the minimum distance separation requirements of the Commission's Rules, provided there a site restriction of 13.6 kilometers (8.4 miles) east of Prineville.<sup>2</sup>

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Bend, Oregon, and Prineville, Oregon:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Bend, Oregon	253C3, 231C, 248C1, 259C2, 264C1, 289C1	253C1, 231C, 248C1, 259C2, 264C1, 289C1
Prineville, Oregon	255C3, 236C1	27 IC3, 236C1

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 in paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **May 12, 2003**, and reply comments on or before **May 27, 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 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the petitioner, as follows:

J Dominic Monahan  
 Luvaas, Cohn, Richards & Frasca, P.C.  
 777 High Street, Suite 300  
 Eugene, Oregon 97401

<sup>1</sup> The reference coordinates for Channel 253C1 at Bend, OR are 44-04-41 NL and 121-19-57 WL.

<sup>2</sup> The reference coordinates for Channel 27 IC3 at Prineville, OR are 41-20-36 NL and 120-44-06 WL.

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can 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, Vistronix, 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. An envelope 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 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding 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 Fed.Reg. 11549 (February 9, 1981).

10. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket 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  
Media Bureau

## 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(TV) Table of Allotments, Section 73.202(b) (73.606(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 Rewired. Comments are invited on the proposal discussed in the **Notice of Proposed Rule Making** to which this Appendix is attached. The 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(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. 10554.

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.**, Washinyon, D.C.