

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

SEP 10 9 58 AM '03

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments,)
FM Broadcast Stations.)
(Mt. Vernon and Okawville, Illinois))
)
Reclassification of License)
of Station KEZK-FM, St. Louis, Missouri)

DISPATCHED
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MB Docket No. 03-196
RM-10626

NOTICE OF PROPOSED RULE MAKING

Adopted: September 3, 2003

Released: September 8, 2003

Comment Date: October 30, 2003

Reply Comment Date: November 14, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Benjamin Stratemeyer ("Petitioner"), licensee of Station WIBV(FM), Mount Vernon, Illinois, seeking to amend the FM Table of Allotments by reallocoting Channel 271B1 from Mount Vernon to Okawville, Illinois, as the community's first local aural transmission service, and modifying the license of Station WIBV(FM) to reflect the change of community. 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 KEZK-FM, St. Louis, Missouri, Channel 273C to specify operation on Channel 273C0.^{2,3}

2. Petitioner advises that Channel 271B1 is the only Class B1 channel available for allotment at Okawville. In further support of its proposal, Petitioner asserts that the reallocation will not deprive Mount

¹ See Section 73.207(b)(1).

² The distance between the required site for requested Channel 271B1 at Okawville and Station KEZK's licensed site is 88 kilometers. A minimum distance separation of 105 kilometers is required in this instance. However, if Station KEZK is reclassified to operate as a Class C0 facility, the short spacing issue will be eliminated.

³ Station KEZK-FM operates on Channel 273C with an effective radiated power ("ERP") of 100 kilowatts ("kW") at 313 meters height above average terrain (HAAT), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore Station KEZK-FM is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission's *Second Report and Order*, MM Docket No. 98-93,³ and outlined in note 2 to Section 1.420(g) and note 4 to Section 73.3573 of the Commission's Rules. Pursuant to the requirements set forth in Section 73.3573 Note 4, an *Order to Show Cause* directed to Infinity Radio Subsidiary Operations, Inc ("Infinity"), licensee of Station KEZK-FM, St. Louis, Missouri, 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 KEZK will be reclassified in the context of this proceeding to specify operation on Channel 273C0 instead of Channel 273C at St. Louis, Missouri.

Vernon of its sole local aural transmission service,⁴ and that the reallocation will result in a preferential arrangement of allotments because Okawville would receive its first local aural transmission service. Petitioner further states that Okawville is a community for allotment purposes. It is an incorporated community with a 2000 U.S. Census population of 1,355 persons.⁵ Petitioner stated that it is located outside any Urbanized Area and the proposal at Okawville will not place a 70 dBu signal over any Urbanized Area, and thus no analysis using the factors in *Fay and Richard Tuck*⁶ is required. Commission analysis bears this out and we find that Okawville is a community for allotment purposes.

3. We believe that the public interest would be served by proposing the reallocation of Channel 27B1 from Mount Vernon to Okawville, Illinois since it could provide a first local aural transmission service to the community. A staff engineering analysis of the proposal has determined the unavailability of any alternate Class B1 channel or antenna site to accommodate Petitioner's proposal at Okawville. However the reclassification of Station KEZK to specify operation on Channel 273C0 at St. Louis, Missouri will eliminate any short spacing to requested Channel 271B1 at Okawville, Illinois, by using Petitioner's requested site 19.0 kilometers (11.8 miles) southeast of the community.^{7,8} Operation on Channel 271B1 from the restricted site specified also will 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 communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Mount Vernon, Illinois	231B1, 271B1	231B1
Okawville, Illinois	---	271B1
St. Louis, Missouri	222C, 229C1, 242C1, 251C1, 273C, 277C1, 299C	222C, 229C1, 242C1, 251C1, 273C0, 277C1, 299C

5. 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.

⁴ Commercial Stations WMIX-FM and WMIX(AM) and noncommercial educational Stations WAPO(FM) and WBMV(FM) are licensed to serve Mount Vernon.

⁵ Petitioner gives an exhaustive description of Okawville's attributes as a community for allotment purposes.

⁶ 3 FCC Rcd 5374 (1988)

⁷ Coordinates for Channel 271B1 at Okawville are 38-21-56NL and 89-21-2 WL.

⁸ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station KEZK-FM to specify operation on Channel 273C0 rather than Channel 273C, at St. Louis, Missouri at its licensed coordinates 38-34-24 NL and 90-19-30 WL. The site restriction at Okawville is necessary to protect Station WGEL(FM), Channel 269A, Greenville, Illinois, at coordinates 38-38-11 NL and 89-20-56 WL.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before October 30, 2003, and reply comments on or before November 14, 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, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Clifford M. Harrington, Esq.
Dawn M. Scarrino, Esq.
Collette M. Capretz, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1128

7. 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, Vistrionix, 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 a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁹

9. For further information concerning this proceeding, contact Victoria M. McCauley (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 petitioners constitutes an *ex parte*

⁹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

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
Assistant Chief, Audio Division
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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (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, at its headquarters, 445 12th Street, S.W., Washington, D.C.