FCC MAIL SECTION

[redacted]

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

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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Anniston, Alabama)	)	MB Docket No. 04-79
	)	RM-10873
	)	RM-10874
(St. Florian, Alabama)	)	
	)	MB Docket No. 04-80
	)	RM-10875
	)	
(Patagonia, Arizona)	)	MB Docket No. 04-81
	)	RM-10876
	)	
(Pima, Arizona)	)	MB Docket No. 04-82
	)	RM-10877
	)	
(Somerton, Arizona)	)	MB Docket No. 04-83
	)	RM-10878
	)	
(Willcox, Arizona)	)	MB Docket No. 04-84
	)	RM-10879
	)	
(Sutter Creek, California)	)	MB Docket No. 04-85
	)	RM-10880
	)	RM-10881
	)	
(Westley, California)	)	MB Docket No. 04-86
	)	RM-10882
	)	RM-10883
	)	RM-10884
	)	RM-10885
	)	
(Olathe, Colorado)	)	MB Docket No. 04-87
	)	RM-10886
	)	
(Olathe, Colorado)	)	MB Docket No. 04-88
	)	RM-10887
	)	
(Horseshoe Beach, Florida)	)	MB Docket No. 04-89
	)	RM-10888
	)	
(Live Oak, Florida)	)	MB Docket No. 04-90
	)	RM-10889
	)	
	)	

(Asbury, Iowa)	)	MB Docket No. 04-91
	)	RM-10890
	)	RM-10891
	)	
(Keosauqua, Iowa)	)	MB Docket No. 04-92
	)	RM-10892
	)	RM-10893
	)	
(Moville, Iowa)	)	MB Docket No. 04-93
	)	RM-10894
	)	
(Rudd, Iowa)	)	MB Docket No. 04-94
	)	RM-10895
	)	
(Weiser, Idaho)	)	MB Docket No. 04-95
	)	RM-10896
	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 2004 **Released: March 26, 2004**

By the Chief, Audio Division:

Comment Date: May 17, 2004
Reply Comment Date: June 1, 2004

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth seventeen Petitions for Rule Making to amend the FM Table of Allotments, Section 73.202(b) of the rules, to reserve certain vacant FM allotments for noncommercial educational ("NCE") use.

2. In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* ("*NCE Report and Order*"), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.[1] Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 200 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m contour of the proposed station. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. Thereafter, the Commission extended the expanded criteria to existing vacant FM allotments for which a Notice of Proposed Rule Making had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.[2]

3. In a Public Notice released September 30, 2003, we invited petitions for rule making to reserve

[1] 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station a foreign broadcast station.

[2] *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* ("*NCE Second Report and Order*"), 18 FCC Rcd 6691 (2003).

vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order.*[3] In response to the Public Notice, we received 129 petitions for the reservation of 91 allotments. We believe that the public interest would be served by proposing the reservation of the above-captioned allotments for NCE use. Based upon our preliminary study, each petitioner has expressed an interest in applying for an FM allotment reserved for NCE use, is eligible to do so, and has demonstrated compliance with the expanded criteria set forth in the *NCE Report and Order.* We are combining the separate NCE reservation proposals into a single *Notice of Proposed Rule Making.* Each proposal has its own docket and rulemaking number, and the Commission's Reference Center will maintain a file for each docket. This procedure will conserve Commission resources and expedite the processing of the FM allotment reservation petitions by avoiding duplicative actions.[4] We will not entertain counterproposals or any proposal to modify the underlying allotment other than reserving the allotment for NCE use. Instead, a party may file rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. In addition, a party may file comments demonstrating that the reservation proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m contour of the proposed station.

4. We request comment on the following reservation proposals.

A. MB Docket No. 04-79; RM-10873, RM-10874

Proposal: Reserve Channel 261C3 at Anniston, Alabama for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

Community	Present	Proposed
Anniston, Alabama	261C3	*261C3

Coordinates: 33-40-51 NL and 85-48-56 WL

Additional Information: Jimmy Jarrell Communications Foundations Inc. ("Petitioner") also filed a petition for rule making requesting to reserve Channel 261C3 at Anniston, AL for non-commercial use. (RM-10874) Petitioner failed to provide an address and contact number.

[3] *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments,* 18 FCC Rcd 19600 (MB 2003).

[4] The staff will release additional multiple docket notices of rulemakings during the next several weeks.

B. MB Docket No. 04-80; RM-10875

Proposal: Reserve Channel 274A at St. Florian, Alabama for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

Community	Present	Proposed
St. Florian, Alabama	274A	*274A

Coordinates: 34-57-8 NL and 87-39-30 WL

C. MB Docket No. 04-81; RM-10876

Proposal: Reserve Channel 251A at Patagonia, Arizona for non-commercial use.

Petitioner: David A. O'Connor, Esq.
c/o Calvary Chapel of Tucson
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

Community	Present	Proposed
Patagonia, Arizona	251A	*251A

Coordinates: 31-33-05 NL and 110-44-45 WL

D. MB Docket No. 04-82; RM-10877

Proposal: Reserve Channel 296A at Pima, Arizona for non-commercial use.

Petitioner: David A. O'Connor, Esq.
c/o Calvary Chapel of Tucson
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

Community	Present	Proposed
Pima, Arizona	296A	*296A

Coordinates: 32-53-36 NL and 109-49-42 WL

E. MB Docket No. 04-83; RM-10878

Proposal: Reserve Channel 260C3 at Somerton, Arizona for non-commercial use.

Petitioner: William J. Byrnes, Esq.
c/o Radio Bilingue, Inc.
7921 Old Falls Road
McLean, VA 22102

Community	Present	Proposed
Somerton, Arizona	260C3	*260C3

Coordinates: 32-35-0 NL and 114-35-5 WL

F. MB Docket No. 04-84; RM-10879

Proposal: Reserve Channel 223C3 at Willcox, Arizona for non-commercial use.

Petitioner: David A. O'Connor, Esq.
c/o Calvary Chapel of Tucson
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

Community	Present	Proposed
Willcox, Arizona	223C3	*223C3

Coordinates: 32-16-22 NL and 109-48-14 WL

G. MB Docket No. 04-85; RM-10880, RM-10881

Proposal: Reserve Channel 298A at Sutter Creek, California for non-commercial use.

Petitioners: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

David A. O'Connor, Esq.
c/o Calvary Chapel of Amador County
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

Community	Present	Proposed
Sutter Creek, California	298A	*298A

Coordinates: 38-23-30 NL and 120-48-06 WL

H. MB Docket No. 04-86; RM-10882, RM-10883, RM-10884, RM-10885

Proposal: Reserve Channel 238A at Westley, California for non-commercial use.

Petitioners: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

William J. Byrnes, Esq.
c/o Radio Bilingue, Inc.
7921 Old Falls Road
McLean, VA 22102

Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

Theodore D. Frank, Esq.
Maureen R. Jeffreys, Esq.
c/o KQED, Inc.
Arnold & Porter
555 12th Street, N.W.
Washington, DC

Community	Present	Proposed
Westley, California	238A	*238A

Coordinates: 37-28-13 NL and 121-11-14 WL

I. MB Docket No. 04-87; RM-10886

Proposal: Reserve Channel 270C2 at Olathe, Colorado for noncommercial use.

Petitioner: Harry C. Martin, Esq.
Lee G. Petro, Esq.
c/o Calvary Chapel of Montrose
Fletcher, Heald & Hildreth PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Community	Present	Proposed
Olathe, Colorado	270C2	*270C2

Coordinates: 38-36-18 NL and 107-58-54 WL

J. MB Docket No. 04-88; RM-10887

Proposal: Reserve Channel 293C at Olathe, Colorado for non-commercial use.

Petitioner: Harry C. Martin, Esq.
Lee G. Petro, Esq.
c/o Calvary Chapel of Montrose
Fletcher, Heald & Hildreth PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Community	Present	Proposed
Olathe, Colorado	293C	*293C

Coordinates: 38-37-3 NL and 107-58-33 WL

K. MB Docket No. 04-89; RM-10888

Proposal: Reserve Channel 234C3 at Horseshoe Beach, Florida for non-commercial use.

Petitioner: Harry C. Martin, Esq.
Lee G. Petro, Esq.
c/o Living Proof, Inc.
Fletcher, Heald & Hildreth PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Community	Present	Proposed
Horseshoe Beach, Florida	234C3	*234C3

Coordinates: 29-26-28 NL and 83-17-15 WL

L. MB Docket No. 04-90; RM-10889

Proposal: Reserve Channel 259A at Live Oak, Florida for non-commercial use.

Petitioner: Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

Community	Present	Proposed
Live Oak, Florida	259A	*259A

Coordinates: 30-13-12 NL and 82-54-0 WL

M. MB Docket No. 04-91; RM-10890, RM-10891

Proposal: Reserve Channel 238A at Asbury, Iowa for non-commercial use.

Petitioners: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

Community	Present	Proposed
Asbury, Iowa	238A	*238A

Coordinates: 42-30-18 NL and 90-40-46 WL

N. MB Docket No. 04-92; RM-10892, RM-10893

Proposal: Reserve Channel 271C3 at Keosauqua, Iowa for non-commercial use.

Petitioner: Todd D. Gray, Esq.
Margaret L. Miller, Esq.
Barry S. Persh, Esq.
c/o University of Iowa
Dow, Lohnes, & Albertson, PLLC
1200 New Hampshire Avenue, Suite 800
Washington DC 20036

Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

Community	Present	Proposed
Keosauqua, Iowa	271C3	*271C3

Coordinates: 40-43-48 NL and 91-57-48 WL

O. MB Docket No. 04-93; RM-10894

Proposal: Reserve Channel 246A at Moville, Iowa for non-commercial use.

Petitioner: Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

Community	Present	Proposed
Moville, Iowa	246A	*246A

Coordinates: 42-29-11 NL and 96-0-36 WL

P. MB Docket No. 04-94; RM-10895

Proposal: Reserve Channel 268A at Rudd, Iowa for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

Community	Present	Proposed
Rudd, Iowa	268A	*268A

Coordinates: 43-7-34 NL and 92-54-20 WL

Q. MB Docket No. 04-95; RM-10896

Proposal: Reserve Channel 280C1 at Weiser, Idaho for non-commercial use.

Petitioner: Jeff Abrams, Chairman
Boise Community Radio Project, Inc.
4370 Kitsap Way
Boise, ID 83703

Community	Present	Proposed
Weiser, Idaho	280C1	*280C1

Coordinates: 44-20-39 NL and 117-7-14 WL

Additional Information: In compliance with § 1.52 of the Commission's rules, Boise Community Radio Project, Inc. is requested to include with its comments verification that the

statements contained in the petition are accurate to the best of its knowledge.[5]

5. Comments, reply comments and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the pleading pertains. The Commission's authority to institute rulemaking 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 reserved.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 17, 2004 and reply comments on or before June 1, 2004, 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 the petitioner or its counsel.

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 messeger 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 messinger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 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 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 rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.[6]

9. For further information concerning a proceeding listed above, contact Rolanda F. Smith, (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

[5] Although the request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules require that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919, n.41 (1990). Boise Community Radio Project, Inc. is requested to rectify this omission in its comments.

[6] *See Certification that Sections 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 Fed. Reg. 11549 (February 9, 1981).

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 its staff for the clarification or adduction of evidence or resolution of issues in this 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 any 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, 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 sections0.61, 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 the 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 reserved and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. 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 the 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.

4. 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.

5. 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.