FCC MAIL SECTION

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

JAN 12 11 59 AM '05

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-5
Table of Allotments,	)	RM-11139
FM Broadcast Stations.	)	
(Morro Bay and Oceano, California)	)	
	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 5, 2005 **Released: January 10, 2005**

Comment Date: March 3, 2005
Reply Comment Date: March 18, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making in which Lazer Broadcasting Corporation, licensee of Station KLMM(FM), Morro Bay, California ("Petitioner"), proposes the reallotment of Channel 231A from Morro Bay to Oceano, California, as the community's first local transmission service, and the modification of the license for Station KLMM(FM) to reflect the new community. Petitioner pledges to file an application for the channel and to construct the facilities if the application is granted.

2. Petitioner filed this proposal for reallotment in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.[1] In considering a reallotment proposal, we compare the existing allotment to the proposed allotment to determine whether the reallotment will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.[2]

3. In support of the petition, Petitioner states that its proposal will serve the public interest, it would result in a preferential arrangement of allotments, and meets the requirements for reallotment set forth in *Change of Community R&O*. First, the allotment of Channel 231A at Oceano is mutually exclusive with the current use of Channel 231A at Morro Bay. Second, the community of Morro Bay, 2000 U.S. Census population 10,350 persons, would not be deprived of its sole local service.[3] Third, the proposal would provide a first local aural transmission service at Oceano under Priority (3), which will result in a preferential arrangement of allotments over the retention of a second local transmission service at Morro Bay, which would serve Priority (4). We seek comment on the public interest benefits of the change of community.

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[1] *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"),* 4 FCC Rcd 4870 (1989), *recon. granted in part,* 5 FCC Rcd 7094 (1990).

[2] *See Revision of FM Assignment Policies and Procedures,* 90 FCC2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)].

[3] Station KTXY(FM) will remain in Morro Bay.

4. In further support of the reallotment, Petitioner claims that Oceano is a community for allotment purposes, that it is not in any urbanized area, and that its proposed 70dBu will cover less than 50 percent of any urbanized area, and thus no *Tuck*[4] analysis is required.[5] In support of its community status, Petitioner states that Oceano is a Census Designated Place and has its own post office and zip code. It has a 2000 U.S. Census population of 7,260 persons. The community has its own government, the Oceano Community Services District, with an elected Board of Directors, which provides water and sewer service, fire protection, and street lighting services. It has its own airport and schools. There are also parks, churches, community service organizations, and businesses.

5. We believe that the proposal warrants consideration because it would provide Oceano with a first local aural transmission service without depriving Morro Bay of its sole local transmission service. Channel 231A has been proposed to be reallotted at Oceano at a site 12.4 kilometers (7.7 miles) south of the community.[6]

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

	Channel	
Community	**Present**	**Proposed**
Morro Bay, California	231A, 259A	259A
Oceano, California	---	231A

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. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before March 3, 2005, and reply comments on or before March 18, 2005, 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 Petitioner's counsel, as follows:

Harry C. Martin, Esq.
Anne Goodwin Crump, Esq.
Fletcher, Heald and Hildreth, PLC
1300 North 17th Street
Eleventh Floor
Arlington, VA 22209

9. 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

[4] *Faye and Richard Tuck,* 3 FCC Rcd 5374 (1988).

[5] *Headland, Alabama, and Chatahoochee, Florida,* 10 FCC Rcd 10352 (1995). Station KLMM's 70dBu signal currently covers 100% of the San Luis Obispo, California Urbanized Area. From the proposed site, KLMM's 70dBu would cover less than 50% of the Santa Maria, California Urbanized Area.

[6] The coordinates for Channel 231A at Oceano are 34-59-20 NL and 120-37-56 WL.

Service mail). The Commission's contractor, Natek, 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.

10. 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.[7]

11. 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* 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

[7] *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).

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.