

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Grand Portage, Minnesota))	MB Docket No. <u>04-432</u>
)	RM-11121
)	
(Grand Portage, Minnesota))	MB Docket No. 04-433
)	RM-11122

NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 2004

Released: December 10, 2004

Comment Date: January 31, 2005

Reply Date: February 15, 2005

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. In each instance, the petitioner has promised to apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in accordance with the Commission's *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rulemaking*. Each proposal has its own docket and rule making number, and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-432; RM-11121

Petitioner: Cook County Broadcasting of Minnesota

David G. O'Neil
Rini Coran, PC
1501 M Street, N.W.
Suite 1150
Washington, DC 20005

Proposal: Allot Channel 274C at Grand Portage, Minnesota as the community's second local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Grand Portage, Minnesota	245C0 ¹	224C ² , 245C0, 274C

Coordinates: 47-57-50 NL and 89-41-05 WL

Additional Information: Channel 274C can be allotted to Grand Portage at center city coordinates, without site restriction. The proposed allotment will require concurrence by Canada because it is located within 320 kilometers (199 miles) of the Canadian border.

Grand Portage is a community with a population of 538 persons. The community has its own ZIP code (55605), its own branch of the U.S. Postal Service, and a 24-hour office of the U.S. Immigration and Naturalization Service. Grand Portage has its own elementary school, Head Start program, three churches, a health clinic, community center, day care, department of motor vehicles, and water and sewer services. Grand Portage is governed by the Grand Portal Tribal Council Members, consisting of a chairman and four council members. Many local businesses are located in Grand Portage, including several that incorporate "Grand Portage" in their names.

FCC Contact: Deborah A. Dupont (202) 418-7072

B. MB Docket No. 04-433; RM-11122

Petitioner: Cook County Broadcasting of Minnesota

David G. O'Neil
Rini Coran, PC
1501 M Street, N.W.
Suite 1150
Washington, DC 20005

Proposal: Allot Channel 224C at Grand Portage, Minnesota as the community's third local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Grand Portage, Minnesota	245C0 ³ , 274C ⁴	224C, 245C0, 274C

¹ A notice of proposed rulemaking regarding the allotment of Channel 245C0 at Grand Portage, Minnesota, is pending in MB Docket No. 04-339, *Grand Portage, Minnesota*, 19 FCC Rcd 16623 (MB 2004).

² The allotment of Channel 224C at Grand Portage, Minnesota, is proposed later in this notice of proposed rulemaking.

³ See n. 1, *supra*.

Coordinates: 47-57-50 NL and 89-41-05 WL

Additional Information: Channel 224C can be allotted to Grand Portage at center city coordinates, without site restriction. The proposed allotment will require concurrence by Canada because it is located within 320 kilometers (199 miles) of the Canadian border.

Grand Portage is a community with a population of 538 persons. The community has its own ZIP code (55605), its own branch of the U.S. Postal Service, and a 24-hour office of the U.S. Immigration and Naturalization Service. Grand Portage has its own elementary school, Head Start program, three churches, a health clinic, community center, day care, department of motor vehicles, and water and sewer services. Grand Portage is governed by the Grand Portal Tribal Council Members, consisting of a chairman and four council members. Many local businesses are located in Grand Portage, including several that incorporate "Grand Portage" in their names.

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3. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before January 31, 2005, and reply comments on or before February 15, 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, S.W., TW-A325, Washington, D.C. 20554. In addition, a copy of any filing should be served on counsel for the petitioner in the proceeding.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. 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.

5. 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, 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. All 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

⁴ The allotment of Channel 274C at Grand Portage, Minnesota, is proposed earlier in this notice of proposed rulemaking.

should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

6. 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.⁵ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

7. 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

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b)*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), 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* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* 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 47 C.F.R. Sections 1.415 and 1.420, 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* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, 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.