

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. |) | |
| (Hornbeck, Louisiana) |) | MB Docket No. 05-46 |
| |) | RM-11156 |
| |) | |
| (Tennessee Colony, Texas) |) | MB Docket No. <u>05-47</u> |
| |) | RM-11157 |

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 2005

Released: February 7, 2005

Comment Date: March 31, 2005

Reply Date: April 15, 2005

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making* setting forth two proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ With respect to each proposal, the petitioner has stated that he will apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 05-46; RM-11156

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 269A at Hornbeck, Louisiana, as the community's first local FM allotment.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|---------------------|----------------|-----------------|
| Hornbeck, Louisiana | ---- | 269A |

Coordinates: 31-18-42 NL and 93-28-12 WL

¹ See 47 C.F.R. §73.202(b).

Additional Information: The proposed allotment of Channel 269A at Hornbeck requires a site restriction of 7.2 km (4.5 miles) west of Hornbeck at the coordinates indicated above. Petitioner states that Hornbeck is an incorporated community with a population of 450 persons. Petitioner further states that Hornbeck has its own zip code, post office, mayor, city offices, and a number of local churches.

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

B. MB Docket No. 05-47; RM-11157

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 300A at Tennessee Colony, Texas, as the community's first local FM allotment.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|-------------------------|----------------|-----------------|
| Tennessee Colony, Texas | ---- | 300A |

Coordinates: 31-51-38 NL and 95-47-49 WL

Additional Information: Channel 300A can be allotted to Tennessee Colony with a site restriction of 5.0 km (3.1 miles) northeast of Tennessee Colony at the reference coordinates indicated above. Petitioner states that Tennessee Colony is a community with a population of 300 persons and 26 businesses, its own post office, city offices, and a number of local churches.

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

2. 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.

3. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,² interested parties may file comments on or before March 31, 2005, and reply comments on or before April 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, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner listed for each docket.

4. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or

² See 47 C.F.R. §§1.415 and 1.419.

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. 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 Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

5. 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.³ 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 107-198.⁴

6. For further information concerning either of these proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, 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

³ See *Certification that Section 603 and 604 of the Regulatory Flexibility 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).

⁴ See 44 U.S.C. 3506(c)(4).

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 Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, 47 C.F.R. §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 proposals 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 these proceedings 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. 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 (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.