

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

AUG 1 3 42 PM '05

DISPATCH

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-246
FM Broadcast Stations,)	RM-11263
(Meyserville, Texas))	
)	
Reclassification of License)	
of FM Station KCYY, San Antonio, Texas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 27, 2005

Released: July 29, 2005

Comment Date: September 19, 2005

Reply Comment Date: October 4, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Charles Crawford ("Petitioner") requesting the allotment of Channel 261A at Meyersville, Texas, as that community's first local aural transmission service. To accommodate this allotment, Petitioner requests that FM Station KCYY, Channel 262C, San Antonio, Texas, be reclassified as a Class C0 station.

2. FM Station KCYY operates on Channel 262C with less than the minimum Class C antenna height above average terrain ("HAAT") of 451 meters HAAT. As a result, FM Station KCYY 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. 98-93,¹ Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission's rules.

3. Pursuant to the requirements set forth in Section 73.3573, Note 4, we issued an *Order to Show Cause*² directed to CXR Holdings, Inc. ("CXR"), licensee of FM Station KCYY, San Antonio, Texas, 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 explain why the station not be reclassified. CXR filed a response stating that it would file the necessary application to implement minimum Class C standards for FM Station KCYY within 180 days of November 22, 2004, the comment deadline of the *Order to Show Cause*. CXR did not file the necessary application to implement minimum Class C facilities for FM Station KCYY, at San Antonio, Texas. Therefore, in accordance with the Commission's reclassification procedures noted above, the license for FM Station KCYY will be reclassified in the context of this proceeding to specify operation on Channel 262C0 instead of Channel 262C at San Antonio.

4. According to Petitioner, the 2002/2003 Texas Almanac states that Meyersville is a community with a population of 110 persons. Petitioner asserts that Meyersville has its own school

¹ See 1998 Biennial Regulatory Review--Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21649 (2000).

² See *Reclassification of License of FM Station KCYY, San Antonio, Texas, et al.*, 19 FCC Rcd 19482 (MB 2004).

system, a post office, volunteer fire department and several local churches. Petitioner must provide additional information demonstrating that Meyersville is a community. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of local government as well as social, economic, commercial, cultural, public service or religious organizations that serve the community.³

5. We find that the proposal warrants consideration because it could provide a first local service to a community. Channel 261A can be allotted with a site restriction of 2.0 kilometers (1.2 miles) southwest of Meyersville, at reference coordinates of 28-54-58 NL and 97-19-37 WL. To accommodate the proposed allotment, we propose the reclassification of FM Station KCY Y to specify operation on Channel 262C0. Since Meyersville is located within 320 kilometers (199 miles) of the U.S.-Mexican border, we have requested concurrence from the Mexican Government for this proposed allotment.

6. 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>
Meyersville, Texas	-----	261A
San Antonio, Texas	225C1, ⁴ 241C1, 247C, 258C, 262C, 270C1, 274C1, 283C1 298C0	225C1, 241C1, 247C, 258C 262C0, 270C1, 274C1, 283C1, 298C0

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. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before September 19, 2005, and reply comments on or before October 4, 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. 205454. Any counterproposal filed in this proceeding need only protect FM Station KCY Y, San Antonio, Texas, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioner and his counsel, as follows:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel
Suite 600, 1050 17th Street, N.W.
Washington, D.C. 20036

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

³ See, e.g., *Kenansville, Florida*, 5 FCC Rcd 2663 (MMB 1990), *aff'd*, 10 FCC Rcd 9831 (1995).

⁴ Channel 225C1 has been licensed to San Antonio since August 19, 1997 (See BLH-19970530KA). Therefore, we plan to correct 47 C.F.R. § 73.202(b), FM Table of Allotments under San Antonio, Texas, which lists Channel 225C instead of Channel 225C1. This action would constitute an editorial change in the FM Table of Allotments, for which a public notice and comment proceeding is unnecessary. See 5 U.S.C. § 553(b)(A) and (B).

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 Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. 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.**

9. 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 proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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).

10. For further information concerning a proceeding listed above, contact R. Barthen Gorman, Media Bureau (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 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 a 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

⁵ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

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 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) 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 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. 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 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.