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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-291
Table of Allotments,)	RM-11270
FM Broadcast Stations.)	
(Franklin, Addis, and)	
Eunice, Louisiana))	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 12, 2005

Released: October 17, 2005

Comment Date: December 8, 2005

Reply Date: December 23, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Radio and Investments, Inc. ("R&I"), licensee of Station KDDK(FM), Channel 288A, Franklin, Louisiana. Pursuant to Section 1.420(i) of the Commission's rules,¹ R&I proposes to change the community of license for Station KDDK(FM) from Franklin to Addis, Louisiana, providing a first local service to Addis. R&I represents that the proposed allotment of Channel 288A at Addis is mutually exclusive with the current allotment of Channel 288A at Franklin. In order to accommodate the proposed allotment, R&I further requests a change in reference coordinates for Station KEUN-FM, Channel 288A, Eunice, Louisiana. Tri-Parish Broadcasting Incorporated ("Tri-Parish"), licensee of Station KEUN-FM, has consented to the proposed change, and R&I has agreed to reimburse Tri-Parish for its reasonable expenses in making changes to its facilities. If its petition is granted, R&I states that it will file an application for Channel 288A at Addis, and will construct facilities if its application is granted.

2. R&I states that Addis is a town of 2,238 persons, as reported in the 2000 Census. Addis has its own government and elected officials, including a Mayor, Town Council, Police Department, Volunteer Fire Department, Town Clerk, and Public Works Supervisor. Addis supplies its residents with numerous municipal services, such as police, fire, waste water treatment, code enforcement, building permits and inspections, zoning, and street maintenance. Addis has its own ZIP code (70710) and post office. Numerous retail and commercial establishments are located in Addis, including many which include "Addis" in their business name. Addis also is home to several churches, as well as community and civic organizations.

3. *Modification of FM and TV Authorizations to Specify a New Community of License*² establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed

¹ 47 C.F.R. § 1.420(i).

² 4 FCC Rcd 4870 (1989), *recon.granted in part*, 5 FCC Rcd 7094 (1990).

arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ Under those priorities, the existing allotment of Channel 288A at Franklin would, at best, satisfy priority four, "other public interest matters."⁴ The proposed reallocation of Channel 288A at Addis should, therefore, be preferred, because it would satisfy priority three, "first local service." Both Franklin and Addis are well-served with five or more aural broadcast transmission services.

4. Although neither Franklin nor Addis is located within an urbanized area, petitioner states that the proposed change in community will cause Station KDDK to place a 70 dBu signal contour over approximately 13.4 percent of the Baton Rouge Urbanized Area. Because that coverage will be much less than 50 percent, we tentatively conclude that no *Tuck* analysis is necessary.⁵ Interested parties may, nevertheless, demonstrate the feasibility of locating the Station KDDK transmitter at a site that would enable the station to provide a 70 dBu signal to more than 50 percent of the urbanized area. Should such information be presented in this proceeding, we reserve the right to require R&I to provide a *Tuck* analysis.⁶

5. The proposed allotment at Addis could be made, and the transmitter site of Station KEUN-FM, Eunice, Louisiana, could be changed, with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Franklin and Addis, Louisiana, and on the new reference coordinates for Station KEUN-FM, Channel 288A, Eunice, Louisiana:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Addis, Louisiana	---	288A
Franklin, Louisiana	288A, 295C3	295C3 ⁷

Proposed Coordinates for Channel 288A at Addis, Louisiana: 30-19-03 NL and 91-17-05 WL, at a site 4.4 km (2.7 miles) southwest of Addis.

Proposed Coordinates for Channel 288A at Eunice, Louisiana: 30-23-25 NL and 92-29-00 WL, at a site 12.9 km (8 miles) southwest of Eunice.

³ 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

⁴ If this proposal is adopted, Franklin will continue to be served by Station KFRA(AM), Franklin, Louisiana.

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). See also *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (MM 1995) (requires a *Tuck* showing when reallocation proposed to a community outside an urbanized area would provide a 70 dBu signal to more than 50 percent of the urbanized area).

⁶ See *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 11,230 (MB 2003).

⁷ Channel 295C3 at Franklin, Louisiana, is a vacant allotment.

6. 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.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁸ interested parties may file comments on or before December 8, 2005, and reply comments on or before December 23, 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 any filing should be served on counsel for R&I, as follows:

Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036

8. Parties must file an original and four paper 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 Louisiana 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.**

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.⁹ 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

⁸ See 47 C.F.R. §§1.415 and 1.419.

⁹ 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).

with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹⁰

10. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072. For purposes of 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 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

¹⁰ See 44 U.S.C. 3506(c)(4).

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 R&Is. 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.