

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

FCC MB 05-305

Nov 10 11 47 AM '05

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments,)
FM Broadcast Stations.) MB Docket No. 05-305
(Lometa, Luling and Richland Springs, Texas)) RM-11137

NOTICE OF PROPOSED RULE MAKING

Adopted: November 9, 2005

Released: November 10, 2005

Comment Date: January 3, 2006

Reply Comment Date: January 17, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rulemaking filed by Charles Crawford ("Petitioner"), seeking to amend the FM Table of Allotments by allotting Channel 253A Lometa, Texas, as that community's second local FM transmission service. In order for Channel 253A to be allotted to Lometa, Petitioner proposes the substitution of Channel 235 for vacant Channel 252A at Richland Springs, Texas. Additionally, to accommodate this allotment, Petitioner also requests the reclassification of Station KELI(FM), Channel 254C, San Angelo, Texas, to specify operation on Channel 254C0,1 and the reclassification of Station KAMX(FM), Channel 234C, Luling, Texas, to specify operation on Channel 234C02 because each station is operating at below minimum Class C facilities. Petitioner has also certified, as required, that no other Class A channel(s) are available for allotment at Lometa.3 Petitioner filed comments in support of its proposal, pledging to file the necessary applications. No other comments or counterproposals were filed.

1 Station KELI(FM), San Angelo, Texas, currently operates on Channel 254C with an effective radiated power ("ERP") of 100 kilowatts ("kW") at 393 meters height above average terrain (HAAT), which is below the minimum Class C antenna height 451 meters HAAT. The staff has concluded that if Station KELI(FM) operates as a Class C0 facility, any short-spacing between Station KELI(FM) and the proposed use of Channel 253A at Lometa at the proposed site would be eliminated. We issued an Order to Show Cause directed to Encore Broadcasting of San Angelo, LLC ("Encore"), licensee of Station KELI(FM) to show cause why its facilities should not be reclassified. Encore did not respond, and therefore, Station KELI(FM)'s license is reclassified to Channel 254C0. See Various Locations, DA 05-2940 (released November 10, 2005).

2 Station KAMX(FM), Luling, Texas, currently operates on Channel 234C with an effective radiated power ("ERP") of 100 kilowatts ("kW") at 398 meters height above average terrain (HAAT), which is below the minimum Class C antenna height 451 meters HAAT. The staff has concluded that if Station KAMX(FM) operates as a Class C0 facility, any short-spacing between Station KAMX(FM) and the proposed use of Channel 235A at Richland Springs to accommodate the use of Channel 253A at Lometa at the proposed site would be eliminated. We issued an Order to Show Cause directed to Texas Infinity Radio, L.P. ("Texas Infinity"), licensee of Station KAMX(FM), to show cause why its facilities should not be reclassified. Texas Infinity did not respond, and therefore, Station KAMX(FM)'s license is reclassified to Channel 234C0. See Various Locations, DA 05-2940 (released November 10, 2005).

3 See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also Second Report and Order, 15 FCC Rcd at 21,662, ¶ 26.

2. Petitioner's proposal warrants consideration because the allotment could provide Lometa with its second local aural transmission service. A staff engineering analysis of the proposal confirms the unavailability of any alternate Class A channel or antenna site to accommodate Petitioner's proposal at Lometa. The staff analysis also shows that the reclassification of Station KELI(FM), Channel 254C, San Angelo, Texas, to specify operation on Channel 254C0, will eliminate any short spacing to requested Channel 253A at Lometa and the reclassification of Station KAMX(FM), Channel 234C, Luling, Texas, to specify operation on Channel 234C0 will eliminate any short spacing to requested Channel 235A at Richland Springs, Texas. Operation on Channel 253A at Lometa from the restricted site specified also will comply with the requirements of Section 73.315 of the Commission's Rules to provide 70 dBu coverage over the entire community. Since Richland Springs is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government has been requested for the allotment of Channel 235A at Richland Springs.

3. Channel 253A at Lometa can be allotted consistent with the minimum distance separation requirements of the Commission's Rules at Petitioner's requested site 11.7 kilometers (7.3 miles) northwest of the community.^{4,5} Channel 235A can be substituted for vacant Channel 252A at Richland Springs consistent with the minimum distance separation requirements of the Commission's Rules at Petitioner's requested site 9.4 kilometers (5.8 miles) southwest of the community.^{6,7}

4. 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>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Lometa, Texas	270A		253A, 270A
Richland Springs	252A		235A

5. 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.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments or counterproposals on or before December 27, 2005, and reply comments on or before January 10, 2006, and are advised to read the *Appendix* for the proper procedures. Comments must be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Any counterproposal filed in this proceeding need only protect Stations KELI(FM), San Angelo, Texas, and KAMX(FM), Luling, Texas, as Class C0 allotments. Additionally, a copy of such comments should be served on Petitioner, as follows:

Charles Crawford

⁴ Coordinates for Channel 253A at Lometa are 31-18-45 NL and 98-26-45 WL.

⁵ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station KELI (FM) to specify operation on Channel 254C0 rather than Channel 254C, at San Angelo, Texas, at its license coordinates 31-22-01 NL and 100-02-48 WL.

⁶ Coordinates for Channel 235A at Richland Springs are 31-12-30 NL and 99-00-45 WL.

⁷ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station KAMX (FM) to specify operation on Channel 234C0 rather than Channel 234C, at Luling, Texas, at its license coordinates 30-19-23-NL and 97-47-58 WL.

4553 Bordeaux Avenue
Dallas, Texas 75205

7. In addition, a copy of this *Notice of Proposed Rulemaking* shall be sent to Texas Infinity Radio, Inc., LLP as follows:

Jennifer M. Babin, Esq.
Leventhal, Senter & Lerman PLLC
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
(Counsel to Texas Infinity Radio, LLP)

Texas Infinity Radio, LP
2000 K Street, NW
Suite 725
Washington, DC 20006-1809

8. A copy of this *Notice of Proposed Rulemaking* shall also be sent to Encore Broadcasting of San Angelo, LLP as follows:

Kathleen Kirby, Esq.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
(Counsel to Encore Broadcasting
of San Angelo, LLC)

Encore Broadcasting of San Angelo, LLC
3303 N. Midkiff
Suite 115
Midland, Texas 79705

9. 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 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 Marlene H. Dortch, Secretary, 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.**

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸ 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. Section 3506(c)(4).

11. For further information concerning this proceeding, contact Victoria M. McCauley, 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

⁸ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

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 petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that 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

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.