MAR 5 - 2007

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 07-39
Table of Allotments,	)	RM-11360
FM Broadcast Stations.	)	
(Prineville, Oregon)	)	
	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 28, 2007 **Released: March 2, 2007**

Comment Date: April 23, 2007
Reply Comment Date: May 8, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Terry A. Cowan ("Petitioner"), proposing to allot Channel 226C3 at Prineville, Oregon. Petitioner has concurrently filed a FCC Form 301 application[1] for Channel 226C3 at Prineville, and states that he has submitted the requisite filing fee pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services.*[2] Petitioner certifies in his application that, if the requested FM channel is allotted, he will participate in the auction for the channel.

2. We believe the proposal warrants consideration because the proposed allotment could provide a fourth local commercial FM service to the community of Prineville under Priority 4 of the FM Allotment priorities.[3] A staff engineering analysis indicates that Channel 226C3 can be allotted to Prineville, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 44-26-17 NL and 120-57-12 WL with a site restriction of 11.4 km (7.1 miles) north of city reference.

3. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),[4] as follows:

Communit	Present	Proposed
Prineville, Oregon	267C1[5]	226C3, 267C1

[1] File No. BNPH-20070129AAI.

[2] Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*")

[3] The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988).

[4] 47 C.F.R. § 73.202(b).

[5] "[W]e shall amend the Table of Allotments to reflect only vacant allotments that do not correspond to an authorized station or reserved assignment. Assignments for licensed, permitted, and reserved facilities (those for

(continued....)

4. 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. Pursuant to Sections 1.415 and 1.419,[6] interested parties may file comments on or before April 23, 2007 and reply comments on or before May 8, 2007, 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 Petitioner's counsel, as follows:

William D. Silva, Esq.
Law Offices of William D. Silva
5335 Wisconsin Ave., N.W.
Suite 400
Washington, D.C. 20015-2003

6. Parties 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. 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, 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. Section 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

7. 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).[7] 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* Section 3506(c)(4).[8]

(...continued from previous page)
which applications are pending) will be reflected solely in CDBS." *See Revised Allotment Procedures R&O*, 21 FCC Rcd at ____, ¶ 15 (footnote omitted).

[6] 47 C.F.R. §§ 1.415 and 1.419.

[7] *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 (Feb. 9, 1981).

[8] 44 U.S.C. § 3506(c)(4).

8. For further information concerning a proceeding listed above, contact Helen McLean, Media Bureau (202) 418-2738. 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 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.