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

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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 07-164
Table of Allotments,	)	RM-11386
FM Broadcast Stations.	)	
(Peach Springs, Arizona)	)	

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NOTICE OF PROPOSED RULE MAKING

Adopted: August 8, 2007 **Released: August 10, 2007**

Comment Date: October 1, 2007
Reply Date: October 16, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Smoke and Mirrors LLC ("Petitioner"), proposing to substitute Channel 268C3 for vacant Channel 285C3 at Peach Springs, Arizona, and to amend the reference coordinates for that allotment.[1] Petitioner states that the requested substitution is acceptable because the Peach Springs vacant allotment has not yet been designated for auction. Petitioner further represents that the existing reference coordinates for Channel 285C3 do not enjoy line-of-sight to most of the community, whereas the amended reference coordinates proposed by Petitioner would provide an unobstructed line of sight to the entire community using a Height Above Average Terrain (HAAT) of 100 meters.

2. The purpose of the requested channel substitution at Peach Springs is to eliminate a short-spacing with the facilities proposed in an application to amend the construction permit for Channel 285A at Cal-Nev-Ari, Nevada. Petitioner, the permittee of a construction permit for Channel 285A at Cal-Nev-Ari, has proposed a change in reference coordinates for that station, which would create a conflict with the vacant allotment of Channel 285C3 at Peach Springs.[2] We will consider Petitioner's application to amend its construction permit separately from this proceeding.

[1] The amended reference coordinates proposed by Petitioner are: 35-29-35 NL and 113-35-17 WL.

[2] Petitioner filed a FCC Form 301 minor change application for Channel 285A at Cal-Nev-Ari (File No. BMPH-20070124AJQ), and was required to submit a 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*, Report and Order, 21 FCC Rcd 14212 (2006) ("Revised Allotment Procedures R&O"). In its application, Petitioner requested a change in reference coordinates for the allotment at Cal-Nev-Ari and an upgrade to Class C3 facilities. On July 19, 2007, Petitioner withdrew the request for Class C3 facilities, requesting that its construction permit specify Class A facilities at the proposed new coordinates: 35-15-8 NL and 114-44-58 WL.

3. We believe that the proposal to substitute Channel 268C3 for Channel 285C3 at Peach Springs, Arizona, warrants consideration. The proposed channel substitution will accommodate Petitioner's construction of facilities at Cal-Nev-Ari, Nevada, to provide service on Channel 285A, without any deleterious effect upon the service that can be made available using the Class C3 allotment at Peach Springs. A staff engineering analysis indicates that Channel 268C3 can be allotted at Peach Springs, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 35-29-35 NL and 113-35-17 WL with a site restriction of 15.3 km (9.5 miles) west of the community.[3] Accordingly, we seek comment on amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), to substitute Channel 268C3 for vacant Channel 285C3 at Peach Springs, Arizona:

Community	Present	Proposed
Peach Springs, Arizona	285C3	268C3

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 of the Commission's Rules,[4] interested parties may file comments on or before October 1, 2007, and reply comments on or before October 16, 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 any filing should be served on counsel for Smoke and Mirrors LLC, as follows:

Robert L. Olender, Esq.
Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, Maryland 20852

6. 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

[3] A counterproposal in MB Docket No. 05-263 to add Channel 267C3 at Peach Springs, Arizona, was dismissed by order adopted May 23, 2007, and released May 25, 2007, seven days before the filing of the instant petition to add Channel 268C3 at Peach Springs. *See Grants and Church Rock, New Mexico*, DA 07-2196 (MB 2007). There is therefore no technical impediment to the proposed channel substitution at Peach Springs.

[4] *See* 47 C.F.R. §§1.415 and 1.419.

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 Georgia 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. § 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) 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.[6]

8. 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

[5] *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).

[6] *See* 44 U.S.C. 3506(c)(4).

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 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 petitioner. 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.