

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. 07-297
Table of Allotments,)	RM-11413
FM Broadcast Stations.)	
(Pima and Pinetop, Arizona))	
)	
)	

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NOTICE OF PROPOSED RULE MAKING

Adopted: January 9, 2008

Released: January 11, 2008

Comment Date: February 25, 2008

Reply Comment Date: March 11, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Circle S Broadcasting Co., Inc. ("Petitioner"), the licensee of Station KSWG(FM), Wickenburg, Arizona. Petitioner's Petition for Rule Making proposes to substitute Channel 249C1 for vacant Channel 294C1 at Pinetop, Arizona, and Channel *289A (noncommercial educational channel) for vacant Channel *296A at Pima, Arizona. The channel substitution for Pima is at the current allotment site for Channel *296A's transmitter. Petitioner has also filed a contingent application¹ to modify Station KSWG(FM)'s antenna site. The channel substitutions at Pima and Pinetop would accommodate Petitioner's above-referenced modification application. In addition, Petitioner requests that the Commission issue an Order to Show Cause to the licensee of Station KRFM(FM), as to why that station's license should not be modified to specify operation on Channel 295C instead of its current Channel 243C. The foregoing channel change would eliminate the short spacing of Station KRFM(FM) to the proposed modification of Station KSWG(FM)'s antenna site on Channel 242C at Wickenburg, Arizona.²

2. Station KSWG(FM)'s modification application is also short spaced to Station KKLD(FM), Cottonwood, Arizona. In order to eliminate this short spacing, Yavapai Broadcasting Corporation ("Yavapai"), the licensee of Station KKLD(FM), has filed a contingent minor modification application³ to change its channel from Channel 240C0 to mutually exclusive Channel 240C at a new antenna site and to change its community of license from Cottonwood to Clarkdale, Arizona, thus providing Clarkdale with its first local aural transmission service. Yavapai's application was filed pursuant to the *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.⁴ To accommodate the Station KKLD(FM) application, Yavapai requests that the Commission issue an Order to Show Cause to KM Radio of St. Johns, L.L.C. ("KM Radio"),

¹ This application has File No. BMPH-20070119AID and will be acted upon separately.

² The Order to Show Cause will be issued in conjunction with the processing of the application (File No. BMPH-20070119AID) to modify Station KSWG(FM)'s antenna site.

³ This application has File No. BPH-20070119AIF and will be acted upon separately.

⁴ Report and Order, 21 FCC Rcd 14212 (2006).

licensee of Station KWKM(FM), St. Johns, Arizona, as to why the KWKM(FM) license should not be modified to specify operation on Channel 243C instead of its current Channel 239C.⁵

3. We believe the proposal warrants consideration because it would lead to the introduction of a first local broadcast transmission service to Clarkdale, Arizona, under Priority 3 of the FM allotment priorities.⁶ A staff engineering analysis indicates that Channel 249C1 can be substituted for vacant Channel 294C1 at Pinetop, Arizona, consistent with the technical engineering requirements of the Commission's Rules, at coordinates of 34-07-33 NL and 109-56-13 WL, which are Pinetop's town center coordinates. Further, Channel *289A can be substituted for vacant Channel *296A at Pima, Arizona, consistent with the technical engineering requirements of the Commission's Rules, at coordinates of 32-53-36 NL and 109-49-42 WL, which are the current allotment coordinates for vacant Channel *296A.⁷

4. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),⁸ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Pima, Arizona	*296A	*289A
Pinetop, Arizona	294C1	249C1

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 to allot these channels.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁹ interested parties may file comments on or before February 18, 2008 and reply comments on or before March 4, 2008, 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:

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

7. 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

⁵ This Order to Show Cause will be issued in conjunction with the processing of the minor modification application (File No. BPH-20070119AIF) to upgrade Station KKLD(FM) from Channel 240C0 to Channel 240C and to change that station's community of license from Cottonwood to Clarkdale, Arizona.

⁶ 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*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR 2d 448 (1983).

⁷ This channel change complies with the requirements of 47 C.F.R. § 73.202(a)(1)(ii) concerning the use of nonreserved FM channels by noncommercial educational entities.

⁸ 47 C.F.R. § 73.202(b).

⁹ 47 C.F.R. §§ 1.415 and 1.419.

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.**

8. 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).¹⁰ 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).¹¹

9. For further information concerning the 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

¹⁰ *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).

¹¹ 44 U.S.C. § 3506(c)(4).

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.