

**DOCKET FILE COPY ORIGINAL**  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of )  
 )  
 Amendment of Section 73.202(b) ) MB Docket No. 09-50  
 Table of Allotments, ) RM-11515  
 FM Broadcast Stations. )  
 (Cut Bank, Montana) )

MAILED  
 APR 21 2009  
 FCC WASHINGTON

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: April 15, 2009**

**Released: April 17, 2009**

**Comment Date: June 8, 2009**

**Reply Comment Date: June 23, 2009**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed on behalf of College Creek Media, LLC ("Petitioner"), permittee of Station KEAU(FM), Channel 274C1, Fairfield, Montana, proposing the substitution of Channel 265C1 for Channel 274C1 at Cut Bank, Montana<sup>1</sup> to eliminate the substandard spacing to Station KEAU's authorized site.

2. Petitioner requests the proposed Channel 265C1 substitution to eliminate the short-spacing between Station KEAU's authorized transmitter site and the vacant Channel 274C1 at Cut Bank.<sup>2</sup> Petitioner states that the Channel 265C1 substitution at Cut Bank will prevent potential interference problems, and permit the future auction application for the Cut Bank allotment to comply with Section 73.207 of the Commission's Rules.

3. A staff engineering analysis indicates that Channel 265C1 can be allotted to Cut Bank consistent with the minimum distance separation requirements of the Commission's Rules, with the imposition of a site restriction located 39.4 kilometers (24.5 miles) east of Cut Bank. The reference coordinates are 48-39-28 NL and 111-47-29 WL. The proposed allotment of Channel 265C1 at Cut Bank is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested.

4. We find that the Petitioner's proposal warrants consideration because it could eliminate the substandard spacing to the Station KEAU authorized site. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),<sup>3</sup> as follows:

<sup>1</sup> Vacant Channel 274C1 at Cut Bank is a vacant allotment resulting from the cancellation of the Station KCTB-FM license. See File No. BLH-19831117BE.

<sup>2</sup> See File No. BMPH-20080225AHE. In this instance, the required minimum distance separation between these two allotments is 245 kilometers. The reference site for vacant Channel 274C1 at Cut Bank is located 135 kilometers from the authorized site of Station KEAU. Thus, Channel 274C1 at Cut Bank is short-spaced to the authorized site for Station KEAU by 110 kilometers.

<sup>3</sup> 47 C.F.R. § 73.202(b).

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Cut Bank, Montana	274C1		265C1

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 in paragraph 2 of the Appendix before a channel will be allotted.

6. Pursuant to Sections 1.415 and 1.419,<sup>4</sup> interested parties may file comments on or before June 8, 2009 and reply comments on or before June 23, 2009, 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, as follows:

Lee J. Peltzman, Esq.  
 c/o College Creek Media, LLC  
 Shainis & Peltzman, Chartered  
 1850 M Street, NW  
 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 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 12<sup>th</sup> 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).<sup>5</sup> 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

<sup>4</sup> 47 C.F.R. §§ 1.415 and 1.419.

<sup>5</sup> *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).

3506(c)(4).<sup>6</sup>

9. For further information concerning a proceeding listed above, contact Rolanda F. Smith, 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 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

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<sup>6</sup> 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 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.