

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

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OCT 27 2009  
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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 09-180
FM Broadcast Stations.	)	RM-11569
(Kingsland, Texas)	)	RM-11570
	)	
	)	
	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 21, 2009

Released: October 23, 2009

Comment Date: December 14, 2009

Reply Comment Date: December 29, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two Petitions for Rule Making filed by Munbilla Broadcasting Properties, Ltd. ("MBPL") and Katherine Pyeatt ("Pyeatt") (collectively, "Petitioners").<sup>1</sup> Each petition proposes the allotment of FM Channel 284A at Kingsland, Texas, as a first local service. The Petitioners state their intentions to apply for the channel, if allotted. In compliance with the Commission's new procedures, the Petitioners concurrently filed construction permit applications for the requested channel at Kingsland, Texas, and paid the necessary filing fees.<sup>2</sup>

2. The Petitioners contend that Kingsland is a community deserving of a new broadcast service. In support of this position, the Petitioners state that Kingsland is a Census Designated Place in Llano County, Texas, with a population of 4,584 persons. The Petitioners contend that Kingsland has its own zip code and post office, a local volunteer fire department, a Chamber of Commerce, numerous businesses, several churches, and civic organizations such as a Masonic Lodge and Lions Club. In addition, police protection, utility services, and a branch library are provided by Llano County.

3. The proposal warrants consideration because Channel 284A could provide a first local aural service to Kingsland.<sup>3</sup> A staff engineering analysis reveals that Channel 284A can be allotted to Kingsland in compliance with the Commission's minimum distance separation requirements<sup>4</sup> with a site

<sup>1</sup> MBPL filed its rulemaking petition (RM-11569) on August 12, 2009, and Pyeatt filed her petition (RM-11570) on August 25, 2009.

<sup>2</sup> See File Nos. BNPH-20090812AAL for MBPL and BNPH-20090825BIJ for Pyeatt.

<sup>3</sup> Although the Petitioners contend that the proposed allotment would be a first local service at Kingsland, we note that there is a pending application (File No. BNPED-20071015AFN) for a noncommercial, educational FM station on Channel 219 at Kingsland. This application is mutually exclusive with another application (File No. BNPED-20071016AIO) for Channel 219A at Llano, Texas.

<sup>4</sup> 47 C.F.R. § 73.207.

restriction of 3.5 kilometers (2.2 miles) west of the community.<sup>5</sup> The reference coordinates for proposed Channel 284A at Kingsland are 30-40-03 NL and 98-28-29 WL.<sup>6</sup> Because Channel 284A at Kingsland is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

4. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Kingsland, Texas	---	284A

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 Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 14, 2009 and reply comments on or before December 29, 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 the petitioners, as follows:

John Joseph McVeigh, Esq.  
16230 Falls Road, P.O. Box 128  
Butler, Maryland 21023-0128  
(Counsel for MBPL)

Katherine Pyeatt  
2215 Cedar Springs Rd., #1605  
Dallas, Texas 75201

7. Parties are requested 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

<sup>5</sup> There is an apparent short-spacing between Channel 284A at Kingsland and the licensed facilities for Station KXBT(FM), Channel 285A, Dripping Springs, Texas. However, the assignment for Station KXBT(FM) was modified to specify operation on Channel 285A at Bee Cave, Texas, in a construction permit (File No. BPH-20070119AER) granted on May 21, 2007. That authorization was further modified by a construction permit (File No. BMPH-20080707ADE) granted on October 8, 2008.

<sup>6</sup> We note that Pyeatt proposed a site restriction of 7 kilometers (4.4 miles) southeast of Kingsland at 30-41-33 NL and 98-30-06 WL. However, we are proposing MBPL's reference coordinates for the allotment because they are less restrictive.

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. § 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) of the Commission's Rules.<sup>7</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 44 U.S.C. 3506(c)(4).

9. For further information concerning this proceeding, contact Andrew J. Rhodes, 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 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>7</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 (February 9, 1981).

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) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they 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. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W, Washington, D.C.