

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

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-248
Table of Allotments,)	RM-10241
FM Broadcast Stations.)	
(Dos Palos and Chualar, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 2001

Released: September 21, 2001

Comment Date: November 12, 2001

Reply Date: November 27, 2001

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by KNTO, Inc. ("Petitioner"), proposing the reallocation of Channel 240A from Dos Palos, California to Chualar, California, and the modification of the authorization for Station KNTO(FM) accordingly.¹ Petitioner stated its intention to file an application for Channel 240A at Chualar.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner points out that the reallocation of Channel 240A to Chualar would provide a first commercial local service to the community as noncommercial educational station KHDC is licensed to Chualar. Petitioner states that while Dos Palos does not have licensed to it any additional aural services, Station KNTO(FM) has not yet commenced service to Dos Palos so the community will not suffer any cognizable loss of service citing Glencoe and LeSueur, MN, 7 FCC Rcd 7651 (1992) and Sanibel and San Carols Park, FL, 10 FCC Rcd 7215 (1995). Petitioner also states that although a construction permit currently is outstanding to relocate Station KNTO(FM) and change the community of license for Station KNTO(FM) from Livingston to Dos Palos, that permit has not yet been effectuated and Station

¹ Action in MM Docket No. 00-92 reallocated Station Channel 240A, Station KNTO, from Livingston, California to Dos Palos, California. See 15 FCC Rcd 20226 (2000). KNTO, Inc. has a construction permit for Channel 240A at Dos Palos (BPH-20010214ACG).

KNTO(FM) currently continues to be licensed to Livingston, California. According to Petitioner, adoption of this proposal is mutually exclusive with the existing Dos Palos assignment, is in compliance with the Commission's technical spacing rules providing city grade coverage to Chualar, will not involve an urbanized area, and the area no longer served by Station KNTO(FM) will continue to be served by five or more existing services.

3. A staff engineering analysis indicates that Channel 240A can be allotted to Chualar at petitioner's specified site in compliance with the Commission's spacing requirements.² Although we recognize that Station KNTO(FM) remains unbuilt at Dos Palos and that we do not consider removal of the channel from Dos Palos as presenting the same concerns with loss of service that would be represented by the removal of an operating station serving the community, the site specified for Chualar is different than the Dos Palos transmitter site. Therefore, the requested reallocation will have theoretical gain and loss areas. Further, under our allotment priorities, retention of Channel 240A at Dos Palos is considered under Priority 3), first local service, while allotment of Channel 240A at Chualar falls under Priority 4), other public interest matters as non-commercial educational Station KHDC is licensed to Chualar.^{3 4} Also, the proposal would remove the sole potential service from the larger community of Dos Palos, population 4,581 people, reallocation the channel to the smaller community of Chualar, population 1,444 people, which has a local service.⁵

4. We do not generally believe that the public interest is served by removing a community's sole local service merely to provide service to another community. In this instance, reallocation of Channel 240A from Dos Palos would remove the sole local service from the larger community, reallocation the channel as a second service to the smaller community of Chualar. In its proposal, petitioner referenced two proceedings in which the Commission granted the reallocation of channels constituting sole local service (Glencoe and Le Sueur, Minnesota and Sanibel and San Carlos Park, Florida). In Glencoe and Le Sueur, we reallocated Channel 241A from Le Sueur to Glencoe as a first local service based on a showing that no transmitter sites were available. In Sanibel and San Carlos Park, we reallocated Channel 253A from Sanibel to San Carlos Park based on petitioner's

² The coordinates for Channel 240A at Chualar are 36-34-54 and 121-26-34. This site is 6.9 kilometers (4.3 miles) east of the community.

³ The FM allotment priorities are: (1) First full-time aural services; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

⁴ The existence of noncommercial educational stations in a community are considered for purposes of applying Section 307(b) of the Communications Act and determining the number of local transmission services. See Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990), reversing Kaldor Communications, Inc., 98 FCC 2d 292, 294 n.4 (Rev. Bd. 1984).

⁵ The population figures are from the 1990 U.S. Census.

showing that the only sites meeting FCC Rules were unavailable at Sanibel due to environmentally sensitive wetlands and zoning ordinances. In the instant case, petitioner did not provide any information showing unavailability of transmitter sites at Dos Palos, California.

5. As requested, we shall propose to modify the authorization for Station KNT0(FM), Channel 240A, Dos Palos, California, to specify operation on Channel 240A at Chualar, California, in accordance with Section 1.420(i) of the Commission’s Rules. We shall not accept competing expressions of interest in the use of Channel 240A at Chualar. We request comments on our tentative conclusion that a waiver of our restriction on removal of sole existing local transmission service is warranted in this instance. We also request petitioner to provide information regarding any potential gain and loss areas and also indicate the number of reception services which are now available within the gain and loss areas with respect to the communities of Dos Palos and Chualar. Petitioner should provide any additional information supporting the reallocation of Channel 240A from Dos Palos to Chualar.

6 Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, with respect to Dos Palos and Chualar, California, as follows:

Community	Channel No.	
	Present	Proposed
Dos Palos, California	240A	-----
Chualar, California	-----	240A

7. 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.

8. Interested parties may file comments on or before November 12, 2001, and reply comments on or before November 27, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dan Alpert
 The Law Office of Dan J. Alpert
 2120 N. 21st Road
 Arlington, Virginia 22201

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 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.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass 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 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 a summary of any new oral information shall be served by the person making the presentation upon 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, 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 Procedures. 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 Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) 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 Sections 1.415 and 1.420 of the Commission's Rules and Regulations, 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 Section 1.420(a), (b) and (c) of the Commission's Rules.)

Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, 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 Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.