

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

In the Matter of)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-280
Table of Allotments,)	RM-10291
FM Broadcast Stations.)	
(Benjamin, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 26, 2001

Released: October 5, 2001

Comment Date: November 26, 2001

Reply Date: December 11, 2001

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed by Katherine Pyeatt (“Pyeatt”) requesting the allotment of Channel 237C3 at Benjamin, Texas, as that community’s first local broadcast service.¹ Pyeatt stated that she would file an application for Channel 237C3 at Benjamin if the channel is allotted to the community.

2. We believe the proposal warrants consideration because the proposed allotment could provide a first local FM broadcast service to the community of Benjamin, Texas. Pyeatt submits that Benjamin is an incorporated community with a population in excess of 230 people. Pyeatt also states that Benjamin is the county seat of Knox County, has its own local government, post office, school district, volunteer fire department and a number of churches that serve the community. A staff engineering analysis indicates that Channel 237C3 can be allotted to Benjamin consistent with the minimum distance separation requirements of the Commission’s Rules provided there is a site restriction 17.5 kilometers (10.9 miles) north of the community.² The site restriction will prevent a conflict with the proposed allotment of Channel 239C2 at Rule, Texas in MM Docket No. 01-183. See 16 FCC Rcd 14920 (2001).

¹ The allotment of Channel 237C3 at Benjamin could provide a second local service to the community if Channel 257C2 is allotted to Benjamin as requested by Charles Crawford in MM Docket No. 01-131. See 16 FCC Rcd 12680 (2001).

² The coordinates for Channel 237C3 at Benjamin are 33-44-27 and 99-48-54.

3. In view of the fact that the proposed allotment could provide a first local service to Benjamin, Texas, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 237C3 to Benjamin. Therefore, 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 Benjamin, Texas:

Community	Channel No.	
	Present	Proposed
Benjamin, Texas	----	237C3

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

5. Interested parties may file comments on or before November 26, 2001, and reply comments on or before December 11, 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, as follows:

Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214

6. 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.

7. 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, SW, 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 Reference Information Center, Portals II, Room CY-A257, 445 Twelfth Street, SW, Washington, D. C 20554.