

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

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 01-63
Table of Allotments,) RM-10075
FM Broadcast Stations.)
(Kingman and Dolan Springs, Arizona))

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 2001

Released: March 2, 2001

Comment Date: April 23, 2001

Reply Comment Date: May 8, 2001

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Hualapai Broadcasters, Inc. ("petitioner"), licensee of Station KRCY,¹ Kingman, Arizona, requesting the substitution of Channel 224C for Channel 224C1 at Kingman, the reallocation of Channel 224C to Dolan Springs, Arizona, and modification of the license of Station KRCY accordingly. Petitioner stated its intention to apply for Channel 224C if allotted to Dolan Springs, as requested.

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).

3. Petitioner advises that the requested reallocation of Channel 224C to Dolan Springs (pop. 1,090),² a community not located within any Urbanized Area, is mutually exclusive with its modification to Channel 224C1 at Kingman. The distance between the two communities is 62.6

¹ Station KRCY was modified from Channel 290C1 to Channel 224C1 at its existing site in MM Docket No. 99-271. See Boulder City, Nevada, Bullhead City, Lake Havasu City, and Kingman, Arizona, and Ludlow, California, (DA 00-1331), released June 16, 2000. However, action taken in that proceeding does not nullify the petitioner's obligation to file a license application (FCC Form 302) for the modified facilities on Channel 224C1 at Kingman, as directed in MM Docket No. 99-271. Therefore, petitioner is directed to file its license application to specify Channel 224C1 at Kingman within 30 days of the release date of this Notice. Final action in this proceeding will not be taken until Station KRCY has received an authorization on Channel 224C1 at Kingman.

²Population figures reported herein were taken from the 1990 U.S. Census.

kilometers (38.9 miles) whereas a minimum distance of 270 kilometers (167.8 miles) is required in this instance. In further support of its proposal petitioner states that the reallocation of Channel 224 as a Class C channel at Dolan Springs will result in a preferential arrangement of allotments by providing Dolan Springs with its second local FM station and its first competitive service.³ By way of contrast Kingman will continue to be served locally by three other aural services – Stations KAAA(AM), KFLG(FM) and KGMN(FM). Additionally, petitioner states that its reallocation proposal would enable Station KRCY to expand its coverage area. Petitioner advises that Station KRCY(FM) presently provides 1 mV/m service to 98,850 persons and an area of 15,975 square kilometers, whereas its proposal would potentially provide such service to 317,970 persons and 26,517 square kilometers, representing an increase of 221.6% in population and a 63.7% increase in area served.

4. We believe that the petitioner's proposal warrants consideration as the reallocation request could provide Dolan Springs with its second local aural transmission service without depriving Kingman of local aural transmission service. As Station KRCY proposes to change its transmitter site to accommodate its proposal, it will create gain and loss areas. Our engineering study has determined that the loss area of Channel 224C1 at Kingman contains 27,874 people and covers 5,533 square kilometers. The gain area of Channel 224C at Dolan Springs contains 100,564 people and covers 15,661 square kilometers. Therefore, petitioner's proposal would produce a net service gain of 72,690 people and 10,128 square kilometers. Further, our engineering analysis has determined that the entire loss area of Channel 224C1 at Kingman would be served by at least five existing full-time reception services, and thus is considered a well served area. Moreover, our analysis of the gain area reveals that, based upon the petitioner's specified site at Dolan Springs, there are a few sections that are presently underserved. Specifically, we find that 448 people in an area of 775 square kilometers currently receive four full-time services; 235 people in an area of 1,486 square kilometers receive three full-time services; 825 people in an area of 3,598 square kilometers receive two full-time services; an area receiving only one full-time service (gray area) contains 230 square kilometers, but is devoid of any population; and an area receiving no full-time services (white area) covering 242 square kilometers, is likewise uninhabited. As petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 224C at Dolan Springs, Arizona.

5. Channel 224C can be allotted to Dolan Springs, Arizona, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing the Dolan Springs city reference, as specified by the petitioner, at coordinates 35-35-31 NL and 114-16-21 WL.⁴

³ Channel 289C was substituted for Channel 274C at Bullhead City, Arizona, and reallocated to Dolan Springs, in the context of MM Docket No. 99-271, *supra*, as requested by Mag Mile Media, L.L.C. licensee of Station KBYE(FM). An authorization has been issued to Mag Mile Media, L.L.C. at Dolan Springs (see File No. BPH-20000918AGF).

⁴ Channel 224C at Dolan Springs conflicts with Channel 224C2, Lake Havasu City, Arizona, licensed to Station KJJJ at coordinates 34-33-06 NL and 114-11-37 WL. However, Channel 272C2 was substituted for Channel

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	<u>Present</u>	<u>Proposed</u>
Kingman, Arizona		224C1, 234C, 260C2	234C, 260C2
Dolan Springs, Arizona		289C	224C, 289C

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 April 23, 2001, and reply comments on or before May 8, 2001, 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 petitioner's counsel, as follows:

Robert L. Olender, Esq.
Koerner & Olender, P.C.
5809 Nicholson Lane
Suite 124
North Bethesda, MD 20852

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),and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, 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

224C2 in MM Docket No. 99-271, supra, and the license of Steven M. Greeley for Station KJJJ was modified accordingly. The effective date of the Report and Order in MM Docket No. 99-271 was July 31, 2000.

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 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 that 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
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained 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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 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 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, 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 (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.