

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-86
Table of Allotments,)	RM-10079
FM Broadcast Stations.)	
(Lost Cabin and Arapahoe, Wyoming))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 28, 2001

Released: April 6, 2001

Comment Date: May 28, 2001

Reply Comment Date: June 12, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the petition for rule making filed by Idaho Broadcasting Consortium, Inc. ("petitioner"), permittee of Station KSXZ-FM, Channel 256C, Lost Cabin, Wyoming, proposing the reallocation of Channel 256C from Lost Cabin to Arapahoe, Wyoming, and the modification of Station KSXZ-FM's construction permit accordingly. Petitioner states its intention to apply for the channel, if reallocated to Arapahoe.

2. Petitioner files its proposal pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit 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, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Arapahoe is governed by leaders of the Northern Arapahoe Tribe, a federally recognized Nation. Although Arapahoe is not listed in the U.S. Census, it is listed in the 2000 Rand McNally Commercial Atlas and other maps of Wyoming, and is a Census Designated Place attributed with a population of 393 persons. Arapahoe is located within the Wind River Reservation with a land area of 19,125 square kilometers. It has its own post office and zip code (82510). It also has a primary and middle school, a Head Start program, numerous municipal, commercial, and social organizations servicing the special needs and interests

of its residents, including the Arapahoe Health Center, Black Coal Senior Citizens Center, American Indian Justice Center, Turtle Shelter, Boys and Girls Club, Arapahoe Social Service Center, Welcome House, 789 Bingo Truck Stop/Store, Little Wind Feed Lot, and Flying Phoenix Fireworks.

3. We believe that the proposal warrants consideration since the reallocation of Channel 256C at Arapahoe, Wyoming, could provide the larger community with its first local aural transmission service. Since petitioner seeks to change its transmitter site, there will be potential gain and loss areas. Therefore, petitioner is requested to provide a gain and loss area study. Moreover, since Arapahoe is located within the Wind River Reservation, petitioner is also requested to provide documentation indicating it has permission to build a radio tower on the reservation. Although Station KSXZ-FM is not on the air and petitioner states that reallocation would continue to provide service to Lost Cabin, petitioner is requested to demonstrate the overall public interest benefits that would be derived from reallocation of Channel 256C from Lost Cabin (population 30) to Arapahoe, since the allocation could potentially provide a first local service to either community.

4. An engineering analysis that has determined that Channel 256C can be reallocated to Arapahoe in compliance with the Commission's minimum distance with a site restriction of 1.5 kilometers (0.9 miles) northeast at petitioner's requested site.¹ As requested, we shall propose to modify Station KSXZ-FM's construction permit to specify operation on Channel 256C at Arapahoe, Wyoming, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 256C at Arapahoe, Wyoming.

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

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Lost Cabin, Wyoming	256C	---
Arapahoe, Wyoming	----	256C

6. 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.

¹The coordinates for Channel 256C at Arapahoe are 42-58-13 North Latitude and 108-28-30 West Longitude.

7. Interested parties may file comments on or before **May 28, 2001**, and reply comments on or before **June 12, 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, or its counsel or consultant, as follows:

Laura A. Otis
Rosenman & Colin, LLP
805 15th Street, N.W., 9th Floor
Washington, D.C. 20005-2212
(Counsel for Petitioner)

8. 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.

9. For further information concerning this proceeding, contact Sharon P. McDonald, 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 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
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

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 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 Section 1.420(d) of the Commission's Rules).

(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 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 Office of the Secretary,

Federal Communications Commission, 445 12th Street, S.W., TW A-325, 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 12th Street, S.W., Washington, D.C.