

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-116
Table of Allotments,)	
FM Broadcast Stations.)	
(Archer City, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 7, 2003

Released: May 8, 2003

By the Chief, Audio Division:

Comment Date: June 30, 2003

Reply Comment Date: July 15, 2003

1. The Audio Division, on its own motion, proposes the substitution of Channel 248C2 for Channel 248C1 at Archer City, Texas, to conform the FM Table of Allotments to the outstanding construction permit of Texas Grace Communications (“Texas Grace”) for Station KRZB, Channel 248C2, Archer City, Texas (BMPH-19990217IB) (“Class C2 Construction Permit”).

Background

2. In the *Report and Order* in MM Docket No. 99-23, we substituted Channel 248C1 for Channel 248C2 at Archer City, Texas, and modified the Texas Grace Communications (“Texas Grace”) construction permit for Station KRZB, Archer City, to specify operation on Channel 248C1.¹ In its March 15, 1999, Counterproposal in that proceeding, Texas Grace voluntarily sought this proposed upgrade. Moreover, it pledged that in the event the Commission upgraded the Archer City permit, it would “promptly apply for, and if granted, construct” a Class C1 facility. That action became effective on January 18, 2000.² The *Order* also was conditioned upon Texas Grace filing an application to implement this upgrade within 90 days of the *Order*’s effective date, *i.e.*, April 18, 2000. Texas Grace has not done so. Thereafter, in a *Memorandum Opinion and Order* released October 26, 2001, the Commission extended the construction deadline for the Class C2 Construction Permit until October 26, 2004.³

3. We believe that the public interest is served by proposing the substitution of Channel 248C2 for Channel 248C1 at Archer City, Texas. More than three years has now passed since Texas Grace was

¹ *Tipton, Mangum, Eldorado and Granite, Oklahoma, and Archer City, Texas*, 14 FCC Rcd 21161 (M.M. Bur. 1999).

² The reference coordinates for the Channel 248C1 allotment at Archer City, Texas, are 33-36-58 and 98-51-42.

³ *Texas Grace Communications*, 16 FCC Rcd 19167 (2001). The reference coordinates for the Channel 248C2 allotment at Archer City, Texas, are 33-51-40 and 98-38-52.

directed to file a construction permit application for Class C1 facilities in Archer City. During this period, the Commission has received requests for new and modified allotments in the geographical vicinity of Archer City. Under the Commission's Rules, these proposals are required to protect the Archer City vacant Class C1 allotment. In fact, by separate action, the staff is dismissing today a twenty-two community counterproposal in MM Docket No. 00-148 as a result of a prohibited short-spacing to the Archer City Class C1 allotment. Thus, the Archer City Class C1 allotment may be frustrating the introduction of additional service to many communities in Texas and Oklahoma. In order to end the unwarranted preclusionary impact of this unused allotment, we propose the reclassification of the Archer City Class C1 allotment to Class C2 at the coordinates specified in the Texas Grace construction permit. To preserve the Class C1 allotment, Texas Grace must file the requisite application to implement this allotment prior to the comment date in this proceeding. Alternatively, Texas Grace may indicate no objection to the downgrade of the allotment in its comments.

4. Accordingly, we seek comment on the proposed amendments to FM Table of Allotments, Section 73.202(b) of the Commission's rules, with respect to the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Archer City, Texas	248C1	248C2

5. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

6. Interested parties may file comments on or before June 30, 2003, and reply comments on or before July 15, 2003, 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.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴

8. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177. 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 its staff for the clarification or adduction of evidence or resolution of issues in this 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 any 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*

⁴ See *Certification that Sections 603 and 604 of the Regulatory Flexibility 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.

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 COMMUNICATION COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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 the 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 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 the 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.