

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-224
Table of Allotments,)	RM-10853
FM Broadcast Stations.)	RM-10854
(Lake Havasu City, Arizona and Pahrump,)	
Nevada))	
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 8, 2004

Released: June 10, 2004

Comment Date: August 2, 2004

Reply Comment Date: August 17, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it two mutually exclusive Petitions for Rule Making. The first proposal, filed by SSR Communications Incorporated, proposes the allotment of Channel 272C3 at Pahrump, Nevada, as that community's third local service. The second proposal, filed by Steven M. Greeley ("Greeley"), licensee of Station KJJJ(FM), Lake Havasu City, Arizona, requests the substitution of Channel 272C for Channel 272B at Lake Havasu City, Arizona, the reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, as its third local service, and modification of Station KJJJ(FM)'s license accordingly. The petitioners stated their intentions to apply for the requested channels, if allotted.

2. Greeley filed its request pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.¹ The proposed reallocation of Channel 272C at Pahrump is mutually exclusive with the current authorized facilities of Station KJJJ(FM), Channel 272C2, Lake Havasu City, Arizona.² When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.³ In this regard, Greeley states that the reallocation at Pahrump would result in a third local service because the community currently receives local service from Stations KNYE(FM) and KXTE(FM), while the retention of local service at Lake Havasu City would attribute to a sixth local

¹ 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 7394 (1990).

² Station KJJJ(FM) is licensed on Channel 272C2, and has an outstanding construction permit for Channel 272B at Lake Havasu City.

³ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

service.⁴ Thus, the reallocation proposal results in a preferential arrangement of allotments based on priority (4), other public interest matters. In support of its proposal, Greeley states that the proposed reallocation of Channel 272C to Lake Havasu City could result in a more efficient allotment of spectrum, and permit Station KJJJ(FM) to serve a wider area. Specifically, the reallocation proposal could result in a net gain in population of more than 777,000 persons within its 60 dBu contour. Additionally, while the Las Vegas, NV urbanized area is near, the proposed reallocation would not provide coverage to any part of the urbanized area. However, Greeley provided a *Tuck* showing demonstrating that Pahrump is independent of the urbanized area.⁵

3. We find that both proposals warrant consideration because the proposed allotments could provide Pahrump with an additional FM broadcast service. As requested, we shall propose the allotment of Channel 272C3 to Pahrump; and the modification of the license for Station KJJJ(FM) by substituting Channel 272C for 272C2 at Lake Havasu City and by reallocation Channel 272C from Lake Havasu City to Pahrump. A staff engineering analysis has determined that Channel 272C3 can be allotted to Pahrump, Nevada, in conformity with the Commission's Rules, provided there is a site restriction of 6.1 kilometers (3.8 miles) northwest of the community.⁶ Alternatively, Channel 272C can be allotted to Pahrump, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 15.6 kilometers (9.7 miles) west of the community.⁷ However, both proposals cannot be accommodated in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. The proposals are located 9.6 kilometers apart whereas the minimum distance separation requirement is 237 kilometers. Therefore, we shall provide each proponent an opportunity to demonstrate in its comments why its requested channel should be allotted to Pahrump. In this regard, the parties should be guided by the allotment criteria for FM allotment priorities.⁸ Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 272C at Pahrump.

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

⁴ Stations KJJJ(FM), KBBC-FM, KNLB(FM), KRRK(FM) and KZUL-FM, as well as KNTR(AM) is currently license to Lake Havasu City.

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

⁶ The reference coordinates for Channel 272C3 at Pahrump are 36-14-09 North Latitude and 116-02-32 West Longitude.

⁷ The reference coordinates for Channel 272C at Pahrump are 36-15-25 North Latitude and 116-08-45 West Longitude.

⁸ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
	<u>Option 1</u>	
Lake Havasu City, Arizona	244C2, 266C0, 272C2/B ⁹ 283C2, 286C2	244C2, 266C0 283C2, 286C2
Pahrump, Nevada	236A, 298C	236A, 272C, 298C
	<u>Option 2</u>	
Pahrump, Nevada	236A, 298C	236A, 272C3, 298C

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

6. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments on or before August 2, 2004, and reply comments on or before August 17, 2004, 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, as follows:

Matthew K. Wesolowski
 General Manager
 SSR Communications Incorporated
 5270 West Jones Bridge Road
 Norcross, GA 30092-1628

Robert L. Olender, Esq.
 c/o Steven M. Greeley
 Koerner & Olender, PC
 5809 Nicholson Lane
 Suite 124
 North Bethesda, Maryland 20852-5706

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission’s contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules.¹⁰

⁹ As previously stated, Station KJJJ(FM) has an outstanding construction permit for Channel 272B at Lake Havasu City, Arizona.

9. For further information concerning a proceeding listed above, contact Rolanda F. Smith, 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket 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
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

(...continued from previous page)

¹⁰ See *Certification that Section 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).

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-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 Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.