

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

| | | |
|---------------------------------|---|----------------------|
| In the matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| FM Table of Allotments, |) | |
| FM Broadcast Stations. |) | |
| |) | |
| (Booneville, Kentucky) |) | MB Docket No. 04-287 |
| |) | RM-11044 |
| |) | |
| (Rhineland, Wisconsin) |) | MB Docket No. 04-288 |
| |) | RM- 11045 |

NOTICE OF PROPOSED RULEMAKING

Adopted: July 28, 2004

Released: July 30, 2004

Comment Date: September 20, 2004
Reply Comment Date: October 5, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s rules.¹ Each proposal involves a new allotment to the community of license. Each petitioner states that it will file an application for construction and participate at auction if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission’s Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We request comments and/or counterproposals for the following proposals:

A. MB Docket No. 04-287 ; RM-11044

Petitioner: East Kentucky Educational Radio
146 Paul Drive
Hazard, Kentucky 41701

Proposal: Allot Channel 227A at Booneville, Kentucky, as the community’s first local service.

¹ 47 C.F.R. § 73.202(b).

| <u>Community</u> | <u>Present</u> | <u>Channel</u> | <u>Proposed</u> |
|----------------------|----------------|----------------|-----------------|
| Booneville, Kentucky | --- | | 227A |

Coordinates: 37-34-24 NL and 83-46-40 WL.

Additional Information: Petitioner's requested site at coordinates 37-26-48 NL and 83-55-56 WL is defective because it is beyond the minimum distance from which a Class A station is able to obtain 70 dBu (city-grade) coverage over the entire community of license under Section 73.207. Thus, we have proposed an alternate site which does comply with Section 73.207. The proposed can be used if a tower of 207 meters HAAT and reduced power of 1.427 kW is used to avoid a terrain obstruction at 100 meters HAAT. Petitioner is requested to address use of this alternate site and the required tower height and reduced power in its comments.

Channel 227A can be allotted at Booneville at a site 14.1 kilometers (8.8 miles) northwest of the community. Booneville is listed as a city with a population of 111 persons in the 2000 U.S. Census. Petitioner states that the community is incorporated, and is located in Owsley County. It has a mayor, city council, zip code, post office, fully accredited school district, businesses, medical services, and churches. We seek comment on the community status of Booneville, Kentucky. Petitioner is requested to submit additional documentation on this issue and on the public interest benefits of the allotment.

FCC Contact: Victoria McCauley (202) 418-2180.

B. MB Docket No. 04-288; RM-11045

Petitioner: Results Broadcasting of Rhinelander, Inc.
c/o Mark Blacknell, Esq.
Womble, Carlyle, Sandridge & Rice
Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

Proposal: Allot Channel 243C3 at Rhinelander, Wisconsin, as the community's fourth local aural service.

| <u>Community</u> | <u>Present</u> | <u>Channel</u> | <u>Proposed</u> |
|------------------------|----------------|----------------|---------------------|
| Rhinelander, Wisconsin | 248C1, 261C1 | | 243C3, 248C1, 261C1 |

Coordinates: 45-39-43 NL and 89-13-25 WL.

Additional Information: Channel 243C3 may be allotted at Rhinelander with a site restriction of 14.9 kilometers (9.3 miles) east of the community. Stations WHDG(FM), WRHN(FM), and noncommercial Station WXPR(FM) are also licensed to the community. Because this site is within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested for this allotment.

3. Pursuant to Sections 1.415 and 1.419 of the Commission's rules (47 C.F.R. §§ 1.415, 1.419), interested parties may file comments on or before September 20, 2004, and reply comments on or before October 5, 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's counsel, as listed above for each docket.

4. 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, Natek, 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.

5. 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).²

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. 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
Assistant Chief, Audio Division
Media Bureau

² 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 (Feb. 9, 1981).

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), 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* 47 C.F.R. § 1.420(d).)

(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, 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. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (*See* 47 C.F.R. §§ 1.415, 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, 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, at its headquarters, 445 12th Street, S.W., Washington, D.C.