

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

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|---------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 04-339 |
| Table of Allotments, |) | RM-11060 |
| FM Broadcast Stations. |) | |
| (Grand Portage, Minnesota) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: August 25, 2004

Released: August 27, 2004

Comment Date: October 18, 2004

Reply Date: November 2, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a proposal filed by Cook County Broadcasting of Minnesota (“CCBM”), proposing the allocation of Channel 245C0 at Grand Portage, Minnesota, as that community’s first local service. CCBM states that if Channel 245C0 is allotted at Grand Portage, CCBM will timely participate in any auction for the new allotment, file the necessary application for a construction permit for a new station, and construct the new facility in a timely manner.

2. Grand Portage is a community with a population of 538 persons. The community has its own ZIP code (55605) and its own branch of the U.S. Postal Service. Grand Portage has its own elementary school (Grand Portage Elementary School) and a Head Start program (Grand Portage Head Start), both of which enroll students from neighboring towns. Grand Portage is governed by the Grand Portal Tribal Council Members, consisting of a Chairman and four council members. Grand Portage has a health clinic, community center, day care, department of motor vehicles, and water and sewer services. Three churches are located in Grand Portage. The U.S. Immigration and Naturalization Service has a 24-hour office in Grand Portage, which is the port of entry for Crane Lake and Ely, Minnesota. Many local business are located in Grand Portage, including several that incorporate “Grand Portage” in their names. Grand Portage provides numerous services to its citizens, including the Grand Portage Conservation Office, Grand Portage Food Program, Grand Portage Health Service, Waban Healing Center, Education Office, Grand Portage Housing Complex, Grand Portage Sewer Department, and Grand Portage Human Service Department.

3. This proposal complies with the Commission’s technical rules and warrants consideration in order to provide a first local service to Grand Portage, Minnesota. Channel 245C0 can be allotted at Grand Portage, Minnesota, at center city coordinates without site restriction.¹ The proposed allotment is located within 320 kilometers (199 miles) of the United States-Canada border, so it will be necessary to obtain concurrence in the allotment from the Government of Canada. Accordingly, we seek comment on the proposed amendment of

¹ The proposed reference coordinates for Channel 245C0 at Grand Portage are: 47-57-50 North Latitude and 89-41-05 West Longitude.

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Grand Portage, Minnesota:

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------------|----------------|-----------------|
| Grand Portage, Minnesota | --- | 245C0 |

4. 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.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 18, 2004, and reply comments on or before November 2, 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, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the Petitioner, as follows:

David G. O'Neil
Rini Coran, PC
1501 M Street, N.W.
Suite 1150
Washington, D.C. 20005

6. 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. All 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, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. 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.²

8. For further information concerning this proceeding, contact Deborah A. Dupont, Media

² See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

Bureau, at (202)418-7072. 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 the 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant 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 (TV) Table of Allotments, Section 73.202(b) (73.606(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. The 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(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 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.