

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

| | | |
|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | |
| Table of Allotments, |) | |
| FM Broadcast Stations. |) | |
| (Adams, Massachusetts) |) | MB Docket No. 04-357 |
| |) | RM- 11076 |
| |) | |
| (Ashtabula, Ohio) |) | MB Docket No. 04-358 |
| |) | RM- 11071 |
| |) | |
| (Crested Butte, Colorado) |) | MB Docket No. 04-359 |
| |) | RM-11072 |
| |) | |
| (Lawrence Park, Pennsylvania) |) | MB Docket No. 04-360 |
| |) | RM-11073 |
| |) | |
| (Roswell, New Mexico) |) | MB Docket No. 04-361 |
| |) | RM- 11074 |

NOTICE OF PROPOSED RULEMAKING

Adopted: September 15, 2004

Released: September 17, 2004

Comment Date: November 8, 2004

Reply Comment Date: November 23, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth five separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. 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 rule making number and the Commission's Reference Information 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 for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

¹ 47 C.F.R. § 73.202(b).

A. MB Docket No. 04-357; RM-11076

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 255A at Adams, Massachusetts, as that community's first local aural transmission service, and modify the site for vacant Channel 255A at Rosendale, New York to accommodate site for Channel 255A at Adams.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|---|----------------|-----------------|
| Adams, Massachusetts | --- | 255A |
| Coordinates for Channel 255A at Adams: 42-37-12 NL and 73-08-12 WL | | |
| Coordinates for Channel 255A at Rosendale: 41-54-47 NL and 74-09-00 WL. | | |

Additional Information: The allotment of Channel 255A at Adams, Massachusetts requires a site restriction of 1.6 kilometers (1 mile) west of the community. Adams is located within 320 kilometers (200 miles) of the U.S. Canadian border. Thus, concurrence of the Canadian government has been requested for this allotment.

Petitioner states that Adams is an incorporated town with a 2000 U.S. Census population of 5,784 persons. It also states that since a television station is licensed to the community, WCDC-TV, it thus qualifies as a community for allotment purposes.

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

B. MB Docket No. 04-358; RM-11071

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 241B at Ashtabula, Ohio, as that community's fourth local aural transmission service.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|------------------|
| Ashtabula, Ohio | 246B, 252A | 241A, 246B, 252A |

Coordinates: 41-52-38 NL and 80-47-49 WL

Additional Information: Channel 241A can be allotted at Ashtabula with a site restriction of 1.5 kilometers (0.9 miles) northwest of the community. Ashtabula is located within 320 kilometers (200 miles) of the U.S. Canadian border. Thus, concurrence of the Canadian government has been requested for this allotment.

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

C. MB Docket No. 04-359; RM-11072

Petitioner: Linda Davidson
134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 246C3 at Crested Butte, Colorado, as that community's second local aural transmission service.²

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|-------------------------|----------------|-----------------|
| Crested Butte, Colorado | --- | 246C3 |

Coordinates: 38-50-42 NL and 106-54-00 WL

Additional Information: This allotment requires a site restriction of 8.0 kilometers (5.0 miles) east of Crested Butte.

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

D. MB Docket No. 04-360; RM-11073

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 224A at Lawrence Park, Pennsylvania as that community's first local aural transmission service.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|-----------------------------|----------------|-----------------|
| Lawrence Park, Pennsylvania | --- | 224A |

Coordinates: 42-06-00 NL and 80-07-48 WL

Additional Information: This allotment requires a site restriction of 10.6 kilometers (6.6 miles) southwest of the community. Lawrence Park is located within 320 kilometers (200 miles) of the U.S. Canadian border. Thus, concurrence of the Canadian government has been requested for this allotment. It will be a specially negotiated short-spaced allotment limited to 225 watts ERP and 100 meters HAAT to protect Station CJBX-FM, Channel 224B, London, Ontario.

Petitioner states that Lawrence Park is a Census Designated Place (“CDP”) located in northwest Pennsylvania in Erie County. It had a 2000 U.S. Census estimated population of 4,310 persons. Although the designation of an area as a CDP raises the presumption that an area is a “community” for allotment purposes, that presumption is rebuttable.³ Petitioner must submit information demonstrating that Lawrence

² Station KBUT, Channel 212A is also licensed to Crested Butte.

³ See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

Park is a “community” for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of local government as well as social, economic, commercial, cultural, public service, or religious organizations that serve the community.⁴

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

E. MB Docket No. 04-361; RM-11074

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 289C0 at Roswell, New Mexico, City, as that community's thirteenth local aural transmission service.⁵

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|---------------------|--|---|
| Roswell, New Mexico | 235C, 246C1, *258A, 263C1, 284C2, 293C1 | 235C, 246C1, *258A, 263C1, 284C2, 289C0, 293C1 |

Coordinates: 33-30-50 NL and 104-30-05 WL

Additional Information: This allotment requires a site restriction of 13.4 kilometers (8.3 miles) north of Roswell. Since Roswell is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

We also note that a minor change application was later filed by Rooney Moon Broadcasting, Inc., licensee of FM Station KSEL-FM, Channel 290C1, Portales, New Mexico, which conflicts with the proposed Roswell allotment. See File No. BPH-20040426AAJ. Thus, this application will be treated as a counterproposal in this proceeding.

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

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. 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.

4. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before November 8, 2004, and reply comments on or before November 23, 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, and Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as

⁴ See *Hayfield, Virginia*, 12 FCC Rcd 16373 (M.M. Bur 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (M.M. Bur 1990), *aff'd.*, 10 FCC Rcd 9831(1995).

⁵ NCE Station KRLU(FM), Channel 211, and AM Stations KBIM(AM), KNIF(AM), KPSA(AM), KRDD(AM), and KRCX(AM) are also licensed to Roswell.

listed above for each docket.

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) of the Commission's Rules.⁶ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. Section 3506(c)(4).

6. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

John M. Pelkey, Esq.
Counsel, Rooney Moon Broadcasting, Inc.
In re: MB Docket No. 04-361
Garvey, Schubert Barer
1000 Potomac Street NW
Washington, D.C. 20007

7. 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 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.

8. Parties must file an original and four paper 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

⁶ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*, 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b). 46 FR 11549 (February 9, 1981).

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.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

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. Section 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 47 C. F.R. Sections 1.415 and 1.420, 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 47 C.F.R. Section 1.420(a), (b) and (c).) 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 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 (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.