

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

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|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | |
| FM Table of Allotments, |) | MB Docket No. 04-367 |
| FM Broadcast Stations. |) | RM-11070 |
| (Security and Genoa, Colorado) |) | |

NOTICE OF PROPOSED RULEMAKING

Adopted: September 22, 2004

Released: September 24, 2004

Comments Date: November 15, 2004

Reply comments Date: November 30, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Optima Communications, Inc. ("Petitioner"), licensee of Station KSKX(FM), Channel 288C3, Security, Colorado. Petitioner seeks the substitution of Channel 288C2 for Channel 288C3 at Security, Colorado and modification of its license for Station KSKX(FM) accordingly.¹ To accommodate the proposed upgrade, Petitioner requests the substitution of Channel 291C3 for vacant Channel 288C3 at Genoa, Colorado. Petitioner states its intention to file an application for Channel 288C2 at Security.

2. We believe the proposal warrants consideration because the proposed substitution at Security could provide expanded service to approximately 685,950 persons. A staff engineering analysis indicates that Channel 288C2 can be allotted to Security consistent with the minimum distance separation requirements of the Commission's rules with a site restriction 16.12 kilometers (10 miles) southwest of the community at coordinates 38-37-30 NL and 104-49-00 WL. Additionally, the engineering analysis indicates that Channel 291C3 can be substituted for vacant Channel 288C3 at Genoa consistent with minimum distance separation requirements of the Commission's rules with a site restriction 18.4 kilometers (11.4 miles) east of the community at coordinates 39-15-35 NL and 103-17-15 WL. In accordance with Section 1.420(g),² we will not accept competing expressions of interest for the use of Channel 288C2 at Security, Colorado or require Petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

¹ Optima's proposal was filed on October 27, 2003, and amended on March 23, 2004. The amendment proposed different coordinates for Channel 282C2 at Security to avoid a conflict with a then-pending application filed by Laramie Mountain Broadcasting, L.L.C. to upgrade KKHI-FM, (now KJAC(FM)), Timnath, Colorado from Channel 288C2 to Channel 288C1. The application was subsequently granted on April 4, 2004. The amendment retained Optima's proposal to substitute Channel 291C3 for vacant Channel 288C3 at Genoa.

² 47 C.F.R. § 1.420(g).

3. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b),³ as follows:

| Community | Channel No. | |
|--------------------|-------------|----------|
| | Present | Proposed |
| Security, Colorado | 288C3 | 288C2 |
| Genoa, Colorado | 288C3 | 291C3 |

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 by paragraph 2 of the *Appendix* before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419,⁴ interested parties may file comments on or before November 15, 2004, and reply comments on or before November 30, 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 Petitioner, as follows:

Optima Communications, Inc.
 c/o Mark N. Lipp, Esq.
 Vinson & Elkins, L.L.P.
 The Willard Office Building
 1455 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004-1008

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. 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.

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).⁵ 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

³ 47 C.F.R. § 73.202(b).

⁴ 47 C.F.R. §§ 1.415 and 1.419.

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (Feb. 9, 1981).

fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* Section 3506(c)(4).⁶

8. For further information concerning this proceeding, contact Helen McLean, (202) 418-2738. 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 petitioners 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

⁶ 44 U.S.C. § 3506(c)(4).

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) Petitions for rule making which conflict with the proposals in this *Notice* 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. The person filing the comments shall serve comments on the petitioners. 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. Section 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.