

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-229
FM Broadcast Stations.)	RM-10780
(Rosebud and Madisonville, Texas))	
)	
Reclassification of License)	
of FM Station KNUE, Tyler, Texas)	File No. BLH-19850307KT

NOTICE OF PROPOSED RULE MAKING

Adopted: July 13, 2005

Released: July 15, 2005

Comment Date: September 6, 2005

Reply Comment Date: September 20, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Charles Crawford (“Petitioner”) requesting the allotment of Channel 267A at Rosebud, Texas, as that community’s first local aural transmission service. To accommodate this allotment, Petitioner requests a change in reference coordinates for vacant FM Channel 267A at Madisonville, Texas.¹ This relocation requires the reclassification of FM Station KNUE, Channel 268C, Tyler, Texas, to specify operation on Channel 268C.²

2. FM Station KNUE operates on Channel 268C with an effective radiated power (“ERP”) of 100 kilowatts (“kW”) at 327 meters height above average terrain (“HAAT”), which is below the minimum Class C antenna height of 451 meters HAAT. As a result, FM Station KNUE is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission’s *Second Report and Order*, MM Docket No. 98-93,³ Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission’s rules.

3. Pursuant to the requirements set forth in Section 73.3573, Note 4, we issued an *Order to Show Cause*⁴ directed to Capstar Royalty II Corporation (“Capstar Royalty”), licensee of FM Station KNUE, Tyler, Texas, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. Capstar Royalty filed a response stating that it would file the necessary application to implement minimum Class

¹ Vacant Channel 267A at Madisonville, Texas is listed on Auction 62 as FM124.

² The distance between the requested site for vacant Channel 267A at Madisonville, Texas and FM Station KNUE’s licensed site at Tyler is 160 kilometers. A minimum distance separation of 165 kilometers is required in this instance. However, if FM Station KNUE is reclassified to operate as a Class C0 facility, the short spacing issue will be eliminated.

³ See *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 15 FCC Rcd 21649 (2000).

⁴ See *Reclassification of License of Station KNUE(FM), Tyler, Texas*, 19 FCC Rcd 19711 (MB 2004).

C standards for FM Station KNUE within 180 days of November 29, 2004, the comment deadline of the *Order to Show Cause*. Capstar Royalty did not file the necessary application to implement minimum Class C facilities for FM Station KNUE at Tyler, Texas. Therefore, in accordance with the Commission’s reclassification procedures noted above, the license for FM Station KNUE will be reclassified in the context of this proceeding to specify operation on Channel 268C0 instead of Channel 268C at Tyler.

4. Petitioner states that Rosebud is an incorporated city with a 2000 U.S. Census population of 1,493 persons. Rosebud has its own zip code, mayor, city manager, school system, fire department, police department, post office, city offices and a number of local churches and businesses.

5. We find that the proposal warrants consideration because it could provide a first local service to the community of Rosebud. Channel 267A can be allotted with a site restriction 9.1 kilometers (5.6 miles) southwest at reference coordinates 31-01-44 NL and 97-03-31 WL. To accommodate the proposed Rosebud allotment, we will propose the relocation of the reference coordinates for vacant Channel 267A at Madisonville, TX, with a site restriction of 11.6 kilometers (7.2 miles) northeast of Madisonville at reference coordinates 31-02-22 NL and 95-51-00 WL. To this end, our staff engineering analysis has determined that the reclassification of FM Station KNUE(FM) to specify operation on Channel 268C0 at Tyler will eliminate any short spacing to requested site change for vacant Channel 267A at Madisonville, Texas.

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

<u>City</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Rosebud, Texas	-----		267A
Tyler, Texas	221C3, 226C1, 268C 281C2		221C3, 226C1, 268C0 281C2

7. 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. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments or counterproposals on or before September 6, 2005, and reply comments on or before September 20, 2005, 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. Counterproposal filed in this proceeding need only protect FM Station KNUE(FM), Tyler, Texas, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioners’ counsel, as follows:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

8. Parties 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. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. 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.⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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. 3506(c)(4).

10. 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

⁵ 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 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.