

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

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 05-45
Table of Allotments,) RM-11147
FM Broadcast Stations.)
(ATwood, Kansas, McCook, Nebraska,)
Burlington and Flagler Colorado))

NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE

Adopted: February 2, 2005

Released: February 7, 2005

Comment Date: March 31, 2005

Reply Comment Date: April 15, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Border Alliance of Broadcasters ("Petitioner"), proposing the allotment of Channel 280C0 at Atwood, Kansas, as the community's first local aural transmission service. To accommodate the allotment, Petitioner also proposes (a) the substitution of Channel 292C2 for vacant Channel 280C2 at McCook, Nebraska, and the modification of the reference coordinates; (b) the substitution of Channel 282C1 for Channel 281C1 at Burlington, Colorado, and the modification of Station KNAB-FM's license accordingly; and (c) the substitution of Channel 261C3 for vacant Channel 283C3 at Flagler, Colorado. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, Petitioner states that Atwood is the county seat of Rawlings County and has a 2000 U.S. Census population of 1,279 persons.1 Petitioner also states that the community has no local aural services, and that the allotment would satisfy priority (3) of the Commission's FM allotment priorities.2

3. We believe the proposal warrants consideration because the allotment Channel 280C0 will provide Atwood, Kansas, with its first local aural transmission service. An engineering analysis has determined that Channel 280C0 can be allotted to Atwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 33.9 kilometers (21.1 miles) east of the community.3 To accommodate the allotment, Channel 282C1 can be substituted at Burlington at Station

1 A staff search has revealed that Atwood has a local government, banking and financial institutions, schools, library, museum, recreational facilities, retail stores, a real estate company, restaurants, motels, health care services, construction companies, farm supply companies, and an internet service.

2 The FM allotment priorities are: First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See 90 FCC 2d 88, 91 (1982).

3The coordinates for Channel 280C0 at Atwood are 39-49-38 North Latitude and 100-38-48 West Longitude.

KNAB-FM presently licensed site;⁴ Channel 292C2 can be substituted at McCook with a site restriction of 20.5 kilometers (12.7 miles) southeast at the requested modified site;⁵ and Channel 261C3 can be substituted at Flagler with a site restriction of 9.7 kilometers (6.0 miles) east of the community.⁶ Petitioner is requested to provide the public interest benefits to be derived from the channel change at McCook, and the modification of the reference coordinates that requires a site restriction of 20.5 kilometers from the existing center city reference coordinates to accommodate the new allotment at Atwood.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred.⁷ Petitioner has stated its willingness to reimburse the licensee of Station KNAB-FM for reasonable costs associated with changing to Channel 282C1 at Burlington, Colorado, if it ultimately becomes the permittee of the proposed Atwood allotment.

5. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Atwood, Kansas	---	280C0
McCook, Nebraska	230C2, 241C, 253C1, 271C1, 280C2, 287C1	230C2, 241C, 253C1 271C1, 287C1, 292C2
Burlington, Colorado	257C1, 281C1	257C1, 282C1
Flagler, Colorado	283C3	261C3

6. Pursuant to Section 1.87 of the Commission's Rules, KNAB, Inc., may, no later than March 31, 2005, a written statement showing with particularity why its respective license should not be modified as proposed in this *Order to Show Cause*. The Commission may call on KNAB, Inc., to furnish additional information. If raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, KNAB, Inc., will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

7. IT IS FURTHER ORDERED, That a copy of this *Notice of Proposed Rule Making and Order to Show Cause*, be sent by Certified Mail, Return Receipt Requested, to the following:

KNAB, Inc. P.O. Box 516 17534 Colorado Road	Richard Hildreth, Esq. Fletcher, Heald & Hildreth, P.L.C. 1300 North 17 th Street, 11 th Floor
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⁴ The coordinates for Channel 282C1 at Burlington are 39-17-41 North Latitude and 102-15-37 West Longitude.

⁵ The coordinates for Channel 292C2 at McCook are 40-03-34 North Latitude and 100-28-21 West Longitude.

⁶ The coordinates for Channel 261C3 at Flagler are 39-18-00 North Latitude and 102-57-16 West Longitude.

⁷ See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

Burlington, Colorado 80807 Rosslyn, Virginia 22209

8. 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.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 31, 2005, and reply comments on or before April 15, 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. Additionally, a copy of such comments should be served on the petitioner, as follows:

Dan J. Alpert, Esq.
2120 N. 21st Road
Arlington, Virginia 22201
(Counsel for Petitioner)

10. Parties are required to 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. **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. Sec. 1.7. Accordingly, failure to follow the specified filing requirements may result in the treatment of a filing as untimely.**

11. 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.⁸ 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. 3506(c)(4).

12. For further information concerning a proceeding listed above, contact Sharon P. McDonald, 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

⁸ 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).

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

APPENDIX

1. Pursuant to authority found in Sections 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the M Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making and Order to Show Cause* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making and Order to Show Cause* 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 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 and Order to Show Cause* 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., Room 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 Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.