

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

In the matter of)	
)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-101
Table of Allotments,)	RM-11159
FM Broadcast Stations.)	
(Jackson, Wyoming))	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 9, 2005

Released: March 14, 2005

Comment date: May 5, 2005

Reply comment date: May 20, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Jackson Hole Community Radio (“Petitioner”) proposing to amend the FM Table of Allotments, Section 73.202(b) of the rules, to allot Channel 294C2 at Jackson, Wyoming, and reserve it for noncommercial educational (“NCE”) use.

2. In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Report and Order*”), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.¹ Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 200 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m contour of the proposed station, and that such population is at least 2000 persons.²

3. In support of the proposal, Petitioner states that there is a need for new NCE service at Jackson, Wyoming. The community has a 2000 U.S. Census population of 8,647 persons with one 3 kilowatt noncommercial radio station. Petitioner claims that its proposal fulfills the requirements set forth in the *NCE Report and Order* because Channel 294C2 as proposed would provide a second NCE service to over 20,000 persons, which is significantly more than 10 percent of the population in the 1 mV/m service area for its proposal. In addition, Petitioner claims that its proposal also satisfies the technical preclusion criterion set forth in the *NCE Report and Order* because there are no channels available in the FM reserved band based on the preclusion test set forth in the *NCE Report and Order*.

¹ *NCE Report and Order*, 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station a foreign broadcast station.

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Second Report and Order*”), 18 FCC Rcd 6691 (2003).

4. Petitioner's proposal warrants consideration because the allotment could provide Jackson with its second NCE service. A preliminary staff engineering analysis of the proposal confirms that Channel 294C2 as proposed could provide a second NCE service to significantly more than 10 percent of the population within its 1 mV/m service area. In addition, our analysis confirms that there are no channels available in the FM reserved band.

5. 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>
Jackson, Wyoming	227C, 237C, 245C1		227C, 237C, 245C1, 294C2*

6. 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.

7. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments or counterproposals on or before May 5, 2005, and reply comments on or before May 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. Additionally, a copy of such comments should be served on Petitioner, as follows:

Jackson Hole Community Radio, Inc.
c/o Henry A. Solomon, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW
Fifth Floor
Washington, DC 20007-3501

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 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 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. § 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 rule making proceedings to amend the FM Table of Allotments, Section

73.202(b) of the Commission's Rules.³ 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).

10. For further information concerning this proceeding, contact Victoria M. McCauley, 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 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 petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that 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

³ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) 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) 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.