

**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. 05-102
FM Broadcast Stations.)	RM-10630
(Akron and Denver, Colorado))	
)	
Reclassification of License of)	
Station KRFX(FM), Denver, Colorado)	

NOTICE OF PROPOSED RULEMAKING

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:

1. The Audio Division has before it a petition for rule making filed by Akron Broadcasting Company (“Petitioner”), seeking to amend the FM Table of Allotments by allotting Channel 279C1 at Akron, Colorado, as the community’s first local aural transmission service. To accommodate the proposal consistent with the minimum distance separation requirements of the Commission’s Rules, Petitioner’s proposal requires the reclassification of Station KRFX(FM), Denver, Colorado, Channel 287C to specify operation on Channel 278C.¹

2. Petitioner also advises that Channel 279C1 is the only Class C1 channel available for allotment at Akron.² In further support of its proposal, Petitioner asserts that Akron is a community for allotment purposes. It states that the town of Akron was incorporated in 1882, and is listed in the 2000 U.S. Census with a population of 1,711 persons. Akron has its own post office and zip code and is the county seat of Washington County. Petitioner states that Akron has an elected mayor and town council, and the town government provides many services including local zoning and water and sewer service.

¹ Station KRFX(FM) currently operates on Channel 278C with an effective radiated power (“ERP”) of 100 kilowatts at 320 meters height above average terrain (HAAT), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore, Station KRFX(FM) is subject to reclassification as a Class C0 facility. *See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 15 FCC Rcd 21,649 (2000). Pursuant to the requirements set forth in Note 4 of Section 73.3573 of the rules, we issued an *Order to Show Cause* to Jacor Broadcasting of Colorado, Inc. (“Jacor”), licensee of Station KRFX(FM), Denver, Colorado, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action. *See In Re Reclassification of License of Station KRFX(FM), Denver, Colorado*, 18 FCC Rcd 3220 (MB 2003). Jacor responded and filed the necessary application (File No. BPH-20030424AAO) which was granted and then rescinded. *See Public Notice*, Report No. 25498 (June 3, 2003). On November 9, 2004, that application (File No. BPH-20030424AAO) was dismissed. *See Letter to Marissa G. Repp, Esq.*, BPH-20030424AAN, et al., Reference 1800B3 (Chief, Audio Div. November 9, 2004). That action remains pending on reconsideration and any action taken herein is subject to the outcome of that proceeding.

² *See* 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. *See also Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

There are numerous businesses and civic organizations. It has its own schools and library, and there are many churches. Petitioner states that 20,384 persons would gain a service by the addition of Channel 279C1 at Akron, and that it will file an application and construct the facility if the channel is allotted.

3. Petitioner's proposal warrants consideration because the allotment could provide Akron with its first local aural transmission service. A staff engineering analysis of the proposal confirms the unavailability of any alternate Class C1 channel or antenna site to accommodate Petitioner's proposal at Akron. The staff analysis also shows that the reclassification of Station KRFX(FM), Denver, Colorado, to specify operation on Channel 278C0, will eliminate any short spacing to requested Channel 279C1 at Akron, Colorado, by using Petitioner's requested site 24.5 kilometers (15.2 miles) southeast of the community.^{3,4}

4. 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>
Akron, Colorado	---		279C1
Denver, Colorado	239C, 253C, 258C, 262C, 266C, 278C, 286C, 290C, 294C		239C, 253C, 258C, 262C, 266C, 278C0, 286C, 290C, 294C

5. 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.

6. 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 must be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Any counterproposal filed in this proceeding need only protect Station KRFX(FM), Denver, Colorado, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioner, or Petitioner's Counsel, as follows:

John M. Pelkey, Esq.
Garvey, Schubert Barer
1000 Potomac Street, NW
Washington, DC 20007
(Counsel to Akron Broadcasting Company)

7. In addition, a copy of this *Notice of Proposed Rulemaking* shall be sent to Jacor Broadcasting of Colorado, Inc., as follows:

³ Coordinates for Channel 279C1 at Akron are 40-03-28 NL and 102-57-35 WL.

⁴ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station KRFX(FM) to specify operation on Channel 278C0 rather than Channel 278C, at Denver, Colorado at its license coordinates 39-43-50 NL and WL 105-14-07.

Jacor Broadcasting of Colorado, Inc.
c/o Marissa G. Repp, Esq.
Hogan & Hartson L.L.P.
Columbia Square
555 13th St., NW
Washington, D.C. 20004-1109

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 Marlene H. Dortch, 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. § 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.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 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

⁵ 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.

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

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 shall 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.