

**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. 05-112
FM Broadcast Stations.	)	RM-11185
(Fredericksburg, Texas)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: March 16, 2005****Released: March 18, 2005****Comments Date: May 9, 2005****Reply comments Date: May 24, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Katherine Pyeatt ("Pyeatt"), proposing the allotment of Channel 256C3 at Fredericksburg, Texas as the community's first competing FM local service. Pyeatt stated her intention to file an application for Channel 256C3 at Fredericksburg if allotted.

2. Pyeatt states that Fredericksburg is an incorporated community with a population of 8,911 people. Fredericksburg has numerous businesses, churches, Chamber of Commerce, its own mayor, post office, fire department, schools, churches and businesses to serve its residents.

3. A staff engineering analysis indicates that Channel 256C3 can be allotted to Fredericksburg, Texas, consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 17 kilometers (10.6 miles) west of the community.<sup>1,2</sup>

4. The Fredericksburg proposal warrants consideration since it could provide a first competing FM transmission service to the community. Therefore, we will solicit comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Fredericksburg, Texas:

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<sup>1</sup> The coordinates for Channel 256C3 at Fredericksburg are 30-13-21 NL and 99-02-15 WL.

<sup>2</sup> The proposed allotment of Channel 256C3 at Fredericksburg conflicts with a proposal to allot Channel 256A to Ingram, Texas, in MM Docket No. 00-148, which was dismissed by Report and Order. *See Quanah, TX et al.*, 18 FCC Rcd 9495 (MB 2003) (MM Docket No. 00-148). An Application for Review of this decision was filed on June 21, 2004. We caution parties that this proposal will be granted subject to the outcome of MM Docket No. 00-148, since this proceeding is effective but not final. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (MB 2003). This proposal also conflicts with a dismissed proposal for Channel 256A at Harper, Texas, which is pending on reconsideration. Thus, parties are also cautioned that any proposal for Fredericksburg will be granted subject to the outcome of the Harper proceeding. *Id.*

Channel No.

Community  
Fredericksburg, TexasPresent  
----Proposed  
256C3

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. Interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 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 Pyeatt and her counsel as follows:

Katherine Pyeatt  
6655 Aintree Circle  
Dallas, Texas 75214Gene A. Bechtel  
Law Office of Gene Bechtel  
1050 17th Street, N.W., Suite 600  
Washington, D. C. 20036

7. 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 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.**

8. 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.<sup>3</sup> 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).

9. For further information concerning this proceeding, contact Victoria M. McCauley, (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

<sup>3</sup> See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend C.F.R. Sections 73.202(b), 73.504 and 73.606(b)*. 46 FR 11549 (February 9, 1981).

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

## 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.