

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-125
Table of Allotments,)	RM-11176
FM Broadcast Stations.)	
(Weaverville, Palo Cedro,)	
and Alturas, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by George S. Flinn, Jr. ("Flinn"), licensee of Station KWCA(FM), Channel 266A, Weaverville, California. Pursuant to Sections 1.420(g) and (i) of the Commission's rules,¹ Flinn proposes to upgrade and change the community of license for Station KWCA(FM) to Channel 266C3 at Palo Cedro, California.² Flinn further proposes two allotment changes at Alturas, California. First, in order to accommodate the allotment of Channel 266C3 at Palo Cedro, Flinn proposes to downgrade vacant Channel 267C and substitute Channel 268C1. In addition, Flinn proposes a new allotment of Channel 277C at Alturas. Flinn states that, should the Commission grant the allotment changes proposed in his Petition for Rule Making, he will file the necessary applications and take all necessary actions to construct the facilities for Station KWCA(FM), Channel 266C3, Palo Cedro, California, and for new Channel 277C at Alturas, California.

2. Flinn represents that the proposed allotment of Channel 266C3 at Palo Cedro is mutually exclusive with the current allotment of Channel 266A at Weaverville. Flinn states that the proposal would not remove the sole local service from Weaverville, which would continue to be served by Station KHRD-FM, Channel 276C2, Weaverville, California. *Modification of FM and TV Authorizations to Specify a New Community of License*³ establishes that, in evaluating a change of community proposal, we compare the existing versus the

¹ 47 C.F.R. §§ 1.420(g) and (i).

² In order to accommodate the allotment of Channel 266C3 at Palo Cedro, Flinn proposed to downgrade Channel 264C1 to Channel 264B at Corning, California. It is not necessary to consider the downgrade at Corning as part of this rulemaking, because the FM Table of Allotments has already been changed to reflect the licensed Channel 264B for FM Station KTHU at Corning. See *Susanville, Quincy, Corning, and Portola, California*, DA 04-3515, MB Docket No. 04-164 (released November 5, 2004).

³ 4 FCC Rcd 4870 (1989), *recon.granted in part.*, 5 FCC Rcd 7094 (1990).

proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ Under those priorities, the allotment proposal would satisfy priority three by providing a first local service to Palo Cedro, whereas the existing allotment of Channel 266A at Weaverville would, at best, satisfy priority four, “other public interest matters.”

3. The existing 70 dBu contour for Channel 266A at Weaverville does not cover any portion of any urbanized area, but the proposed upgrade and change of community to Channel 266C3 at Palo Cedro would cover 88 percent of the Redding, California, Urbanized Area. For that reason, a *Tuck* analysis must establish that the proposed allotment at Palo Cedro should be considered a first local service.⁵

4. Flinn states that Palo Cedro is a Census Designated Place with a population of 1,247 persons, and that the proposed upgrade and reallocation would provide service to 152,000 persons over 4,800 square kilometers (as compared to 11,800 persons over 2,470 square kilometers, the current service area for Station KWCA(FM) at Weaverville). Flinn further states that Palo Cedro satisfies at least six of the eight *Tuck* criteria, based upon a showing that Palo Cedro has: (a) its own post office and zip code; (b) a wide variety of available (owned and leased) real estate (both business and residential); (c) a Chamber of Commerce; (d) a number of restaurants; (e) several shopping centers; (f) numerous churches; (g) its own volunteer fire department; (h) two banks; (i) a plethora of businesses; and (j) a golf course. Flinn also represents that Palo Cedro has its own schools, fire department, and its own local organizations. We seek comment on this *Tuck* showing as well as any subsequent showing submitted by Flinn in his comments.

5. In order to accommodate the allotment of Channel 266C3 at Palo Cedro, Flinn proposes that the vacant allotment of Channel 267C at Alturas be downgraded and that Channel 268C1 be substituted for that allotment. The proposal, which does not involve a change in reference coordinates, would maintain the existing short-spacing to Channel 265C1 at Malin, Oregon.

6. Flinn also proposes to allot Channel 277C at Alturas. It appears that this proposed new allotment is an attempt to remediate a decrease in potential service from the downgrade of Channel 267C at Alturas; however, because Channel 267C at Alturas is a vacant allotment and no service is currently provided using that channel, there is no need to address a potential loss of service. In any event, the allotment of Channel 277C at Alturas is not essential to Flinn’s primary allotment request, *i.e.*, the upgrade and reallocation of Channel 266C3 at Palo Cedro. For that reason, we will consider the allotment of Channel 277C at Alturas in a separate rule making proceeding.⁶

⁴ 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995).

⁶ See *Alturas, California*, MB Docket No. 05-123, DA-715 (released March 18, 2005).

7. The upgrade and reallocation at Palo Cedro and the downgrade and channel substitution at Alturas could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Alturas, Palo Cedro, and Weaverville, California:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Alturas, California	267C, 293C1, 297C ⁷	268C1, 293C1, 297C
Palo Cedro, California	-----	266C3
Weaverville, California	266A, 276C2	276C2

Proposed Coordinates for Channel 268C1 at Alturas, California: 41-25-00 NL and 121-06-32 WL, at a site 48.1 km (29.9 miles) west of Alturas.

Proposed Coordinates for Channel 266C3 at Palo Cedro, California: 40-40-04 NL and 122-25-31 WL, at a site 19.6 Km (12.2 miles) northwest of Palo Cedro.

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,⁸ 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 any filing should be served on counsel for Flinn, as follows:

Stephen C. Simpson, Esq.
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005

10. 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

⁷ Station KALT-FM, Channel 293C1, is the only local FM station currently providing service at Alturas. Channels 267C and 297C are both vacant allotments.

⁸ See 47 C.F.R. §§1.415 and 1.419.

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.**

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.⁹ 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 107-198.¹⁰

12. For further information concerning any of these proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, 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 the 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief

⁹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

¹⁰ See 44 U.S.C. 3506(c)(4).

Audio Division
Media Bureau

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 Flinns. 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.