

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 08-85
Table of Allotments,)	RM-11427
FM Broadcast Stations.)	
(Needles, California, Ehrenberg and First Mesa,)	
Arizona))	

NOTICE OF PROPOSED RULE MAKING
 and
 ORDER TO SHOW CAUSE

Adopted: July 23, 2008

Released: July 25, 2008

Comment Date: September 15, 2008

Reply Comment Date: September 30, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Michael Cusinato (“Petitioner”),¹ proposing to allot Channel 287B1 at Needles, California, as the community’s fourth local service.² In addition, Petitioner concurrently filed a FCC Form 301 new station application³, and the requisite filing fee pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.⁴ Petitioner certifies in its Petition that if the requested FM channel is allotted, it will participate in the auction process for the channel.

2. To accommodate the proposed Needles allotment, Petitioner also requests the substitution of Channel 228C2 for vacant Channel 286C2 at Ehrenberg, Arizona, and the substitution of Channel 286C2 for Channel 287C2 at Wickenburg, Arizona, and modification of the Station KHOV-FM license accordingly. To this end, we are issuing an *Order to Show Cause* directed to Univision Radio License Corporation, (“Univision”), licensee of Station KHOV-FM to show cause why its license should not be modified to specify operation on Channel 286C2. To accommodate the Wickenburg substitution, Petition proposes to substitute Channel 246C2 for Channel 286C2 at Kachina Village, Arizona, and modify the license for Station KFLX(FM) accordingly. To this end we are also issuing an *Order to Show Cause* directed to Grenax Broadcasting II LLC (“Grenax”), licensee of Station KFLX(FM) to show cause why its license should not be modified to Channel 246C2. Finally, to accommodate the substitution at Kachina Village, Petitioner proposes the substitution of Channel 281C for vacant Channel 247C at First Mesa, Arizona.

¹ This Petition is being considered on reconsideration after its return by letter was appealed by Petitioner. In view of our action adopting this Notice of Proposed Rule Making, Petitioner’s petition for reconsideration is hereby dismissed as moot.

² Stations KLUK(FM), Channel 250C1, KNKK, Channel 296C1, and KTOX(AM) are also licensed to Needles.

³ File No. BNPH-20070312ACB.

⁴ Report and Order, 21 FCC Rcd 14212 (2006) (“*Revised Allotment Procedures R&O*”).

3. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.⁵

4. Whenever an existing licensee is ordered to switch frequencies to accommodate a channel allotment, we require the proponent of the channel allotment to make a commitment to reimburse the affected station for the costs incurred in changing frequencies.⁶ Petitioner states that provided that its construction permit is granted, he will reimburse Univision and Grenax for reasonable costs associated with changing channels at Wickenburg and Kachina Village, respectively.

5. In support of the allotment, Petitioner states that the allotment would serve the public interest because it would provide the community of Needles, population 4,830 persons,⁷ with its fourth local service. It also states that from its proposed site, the entire community will receive the station's signal and that 75,195 persons in California, Nevada and Arizona will receive an additional aural reception service.

6. We believe the proposal warrants consideration because it would provide Needles with an additional transmission service and over 75,000 persons with an additional aural reception service. This will serve Priority 4 of the FM allotment priorities, other public interest matters.⁸ A staff engineering analysis indicates that Channel 287B1 can be allotted to Needles at Petitioner's requested site consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 2.2 kilometers (1.4 miles) south of the community at coordinates 34-49-43 NL and 114-36-38 WL. Channel 228C2 can be allotted at Ehrenberg at a site 18.8 kilometers (17.9 miles) northeast of the community at coordinates 33-48-00 NL and 114-19-12 WL. Channel 281C can be allotted at First Mesa at a site 16.8 kilometers (10.5 miles) south of the community at coordinates 35-41-09 NL and 110-21-43 WL. Channel 286C2 can be allotted at Wickenburg at Station KHOV-FM's license site at coordinates 34-11-32 NL and 112-45-13 WL. Channel 246C2 can be allotted at Kachina Village at Station KFLX(FM)'s license site at coordinates 34-58-06 NL and 111-30-29 WL.

7. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),⁹ as follows:

	<u>Channel</u>	
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Needles, California	---	287B1
Ehrenberg, Arizona	286C2	228C2
First Mesa, Arizona	247C	281C

⁵ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, Order, 2 FCC Rcd 3327 (1987).

⁶ See *Circleville, Ohio*, 8 FCC2d 159 (1967).

⁷ All census population figures are taken from the 2000 U.S. Census.

⁸ The FM allotment priorities are: (1) 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 *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988).

⁹ 47 C.F.R. § 73.202(b).

8. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Univision Radio License Corporation, licensee of Station KHOV-FM, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 286C2 in lieu of Channel 287C2 at Wickenburg, Arizona.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Grenax Broadcasting II, LLC, licensee of Station KFLX(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 246C2 in lieu of Channel 286C2 at Kachina Village, Arizona.

10. Pursuant to Section 1.87 of the Commission's Rules, the above affected licensees, Univision Radio License Corporation, licensee of Station KHOV-FM, and Grenax Broadcasting II, LLC, licensee of Station KFLX(FM), may, no later than MMMM DD, 2008, file a written statement showing with particularity why its license should not be modified as proposed in this *Notice of Proposed Rule Making and Order to Show Cause*. The Commission may call upon the licensee to furnish additional information. If the licensee raises any substantial and material questions of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Rules. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the licensee will be deemed to have consented to a modification as proposed in this *Notice of Proposed Rule Making and Order to Show Cause* and a final Order will be issued if the modification is found to be in the public interest.

11. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Imaging Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

Univision Radio License Corporation
1999 Avenue of the Stars
Suite 3050
Los Angeles, California 90067

Scott R. Flick, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W
Washington, DC 20037
(Counsel to Univision)

Grenax Broadcasting II, LLC
10337 Carriage Club Drive
Lone Tree, Colorado 80124

M. Scott Johnson, Esq.
Fletcher, Heald and Hildreth, PLC
Arlington, VA
(Counsel to Grenax)

12. 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.

13. Pursuant to Sections 1.415 and 1.419,¹⁰ interested parties may file comments on or before September 15, 2008 and reply comments on or before September 30, 2008 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 and Petitioner's representative as follows:

¹⁰ 47 C.F.R. §§ 1.415 and 1.419.

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1705 Peridot Ct.
Castle Rock, Colorado 80108

14. Parties 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 Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. 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. Section 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

15. 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).¹¹ 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* Section 3506(c)(4).¹²

16. For further information concerning a proceeding listed above, contact Victoria 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 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 a particular docket unless the Commission specifically waives this service requirement.

¹¹ 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 (Feb. 9, 1981).

¹² 44 U.S.C. § 3506(c)(4).

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 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.