

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 10-189
Table of Allotments,)	RM-11611
FM Broadcast Stations.)	
(Willow Creek, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 2010

Released: September 27, 2010

Comment Date: November 18, 2010

Reply Date: December 3, 2010

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Miriam Media, Inc. ("Petitioner"), proposing to allot Channel 258A at Willow Creek, California. The purpose of the requested allotment is to maintain Willow Creek's first local service. Petitioner is the auction winner of Permit MM-FM521-A, for Channel 253A, Willow Creek, but the station has not been constructed. Petitioner has submitted a Form 301 application to modify its construction permit to specify operations on Channel 254C1 at Loleta, California.¹ Concurrently, Petitioner submitted a petition for rule making to allot Channel 258A at Willow Creek, in order to maintain a first local service at that community.

2. Petitioner filed a FCC Form 301 application proposing allotment of Channel 258A at Willow Creek, California.² Petitioner submitted a filing fee for that application pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.³ Petitioner states that if Channel 258A is allotted at Willow Creek, Petitioner will file an application for Channel 258A, and, if its application is granted, Petitioner will build the station.

3. Petitioner concedes that the signal contour of proposed Channel 258A at Willow Creek would not provide 70 dBu city-grade coverage to the entire Census Designated Place ("CDP") of Willow Creek. The Commission's rules generally require that a new allotment proposal must provide a 70 dBu city-grade signal contour to the entire proposed community, in accordance with Section 73.315(a) of the Rules.⁴ Petitioner nonetheless argues that this situation is similar to that presented in *Beatty and Goldfield, Nevada*,⁵ wherein we accepted a proposal that did not cover the entire proposed community.

¹ File No. BNPH-20070406ABY.

² File No. BSFH-20061218ADR.

³ Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*").

⁴ 47 CFR § 73.315(a).

⁵ *Beatty and Goldfield, Nevada*, Notice of Proposed Rule Making, 23 FCC Rcd 14,851 (MB 2008), and Report and

In that case, we approved an allotment where the 70 dBu city-grade signal contour would not encompass the entire census-designated boundary, but would encompass the entire town site, wherein most potential listeners resided. Similarly, Petitioner argues, the proposed allotment of Channel 258A at Willow Creek would provide a 70 dBu city-grade signal contour covering the entire population of the CDP, as well as the entire principal community of Willow Creek as defined by Humboldt County and the Willow Creek Community Services District. Petitioner further questions whether the original allotment of Channel 253A at Willow Creek could provide a 70 dBu city-grade signal contour encompassing the entire census-designated boundary.

4. We do not wish to adopt a routine practice of allocating FM channels where it is not possible to provide a 70 dBu city-grade signal contour encompassing the entire proposed community. We have, however, made such allotments in the past. We therefore solicit comments regarding Petitioner's contentions that it has demonstrated substantial compliance with Section 73.315(a) of the Rules, and that the proposed allotment would serve the public interest. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b) as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Willow Creek, California	253A	258A

Proposed Coordinates for Channel 258A at Willow Creek, California: 40-57-29 NL and 123-42-23 WL.

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 in paragraph 2 of the *Appendix* before a channel will be allotted.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁶ interested parties may file comments on or before November 18, 2010, and reply comments on or before December 3, 2010, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on petitioner, as follows:

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 Law Offices of Evan D. Carb, PLLC
 1140 Nineteenth Street, N.W.
 Suite 600
 Washington, DC 20036
 (Counsel for Miriam Media, Inc.)

Order, 24 FCC Rcd 2,225 (MB 2009).

⁶ See 47 C.F.R. §§1.415 and 1.419.

7. 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, 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. § 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.⁷ 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 107-198.⁸

9. For further information concerning 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)

⁷ 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).

⁸ See 44 U.S.C. 3506(c)(4).

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
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 Puopolos. 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.