

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 11-167
Table of Allotments,) RM-11645
FM Broadcast Stations.)
(Altamont, Oregon))

NOTICE OF PROPOSED RULE MAKING

Adopted: October 12, 2011

Released: October 14, 2011

Comment Date: December 5, 2011

Reply Date: December 20, 2011

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Threshold Communications (“Petitioner”), winning bidder in Auction No. 91 for a new construction permit on FM Channel 290A at Butte Falls, Oregon. Petitioner proposes to substitute FM Channel 235C1 for vacant FM Channel 249C1 at Altamont, Oregon, in order to facilitate a minor modification to the Butte Falls allotment, which Petitioner proposes to move to Channel 249A.¹ We seek comment on Petitioner’s proposal.

2. Our independent engineering analysis indicates that Channel 235C1 can be substituted for vacant Channel 249C1 at Altamont, consistent with the minimum distance separation requirements of the Commission’s rules.² The allotment change requested could serve the public interest by preserving a potential Class C1 FM service at Altamont, while allowing the channel substitution proposed for the Butte Falls allotment.

3. While the substitution of Channel 235C1 for vacant Channel 249C1 at Altamont is technically feasible, the proposed change will result in a potential net loss of 57,827 persons. This loss would result from the use of different reference coordinates than those currently shown for vacant Channel 249C1.³ We do not generally consider the issue of gains and losses of area and population in the context of same-class channel substitutions for vacant FM channels; nonetheless, in light of the substantial loss in potential population coverage that would result from adoption of the proposal, we request that Petitioner “address the impact of a net loss in service on the overall public interest benefits of its hybrid application-rulemaking proposal.”⁴

¹ See File No. BNPH-20110630AHK.

² The reference coordinates proposed for Channel 235C1 at Altamont, Oregon, are 42-07-04 NL and 121-21-50 WL, at a site 32.3 km (20.1 miles) east of Altamont.

³ The reference coordinates for vacant FM Channel 249C1 at Altamont, Oregon, are 42-05-36 NL and 121-59-35 WL.

⁴ *Dulac, Louisiana*, Report and Order, 24 FCC Rcd 10154, 10155 (MB 2009).

4. Petitioner's proposal warrants consideration. We therefore will solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to Altamont, Oregon:

<u>Community</u>	<u>Present FM Channel</u>	<u>Proposed FM Channel</u>
Altamont, Oregon	249C1	235C1

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.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁵ interested parties may file comments on or before December 5, 2011, and reply comments on or before December 20, 2011, 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 Petitioner as follows:

Donald E. Martin, Esq.
Donald E. Martin, P.C.
Post Office Box 8433
Falls Church, Virginia 22041

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 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.⁶ This document does not contain proposed information collection

⁵ See 47 C.F.R. §§ 1.415 and 1.419.

⁶ 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. 11,549 (Feb. 9, 1981).

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 107-198.⁷

9. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072. For purposes of 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

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

⁷ See 44 U.S.C. 3506(c)(4).

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 petitioner. 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.