

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

In the Matter of )
)
Amendment of Section 73.202(b), ) MB Docket No. 11-168
Table of Allotments, ) RM-11642
FM Broadcast Stations. )
(Llano, Texas) )

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 Bryan King ("Petitioner"), licensee of FM Station KAJZ, Llano, Texas, and permittee of FM Channel 292A, Junction, Texas. Petitioner proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, by substituting Channel 242C3 for vacant Channel 293C3, Llano, Texas. This proposal is part of a contingently filed "hybrid" application and rule making petition.

2. Background. In his contingent application, Petitioner proposes that Station KAJZ operate on FM Channel 293A rather than FM Channel 242A. Correspondingly, Petitioner proposes to amend the FM Table of Allotments by substituting Channel 242C3 for vacant Channel 293C3, at Llano, Texas. In order to accommodate the proposed channel change for the vacant allotment at Llano, Katherine Pyeatt, auction selectee for FM Channel 242A, Menard, Texas, has amended her application to specify operation on Channel 292A, in lieu of Channel 242A. Finally, to facilitate the Menard channel change, Petitioner has filed a minor change application proposing to modify the facilities specified in his construction permit at Junction, Texas, from Channel 292A to Channel 290A.

3. Discussion. The proposed change in the FM Table of Allotments warrants consideration because it complies with our technical requirements and could serve the public interest. This channel substitution will allow KAJZ to move to Channel 293A, thereby alleviating the concerns raised by KAJZ listeners regarding potential interference to their reception of KAJZ on Channel 242. Moreover, by

1 See File No. BNPH-20091015ACK.

2 See File No. BPH-20110825ABP.

3 See File No. BNPH-20110622AAE.

4 See File No. BMPH-20110825ABQ.

5 Petitioner states that KAJZ listeners have filed complaints against translator station K287AY's proposed operation on Channel 242 at Austin, Texas.

modifying its facilities to operate on Channel 293A, KAJZ would no longer need to operate as a Section 73.215 station, as it currently does. 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 Llano, Texas, as set forth below:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Llano, Texas	293C3	242C3

**Proposed Coordinates for Channel 242C3 at Llano, Texas:** 30-55-34 NL and 98-43-24 WL, at a site 19.1 km (11.9 miles) north of Llano.

4. Our engineering analysis indicates that the proposal is short-spaced to a rejected proposal in MB Docket No. 05-112, which is currently under review.<sup>6</sup> For that reason, consistent with *Auburn*,<sup>7</sup> adoption of the proposal in this proceeding would be contingent on the outcome of MB Docket No. 05-112. In addition, concurrence by the Government of Mexico is required for the allotment of Channel 242C3 at Llano, Texas, because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

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,<sup>8</sup> 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. Additionally, a copy of any filing should be served on counsel for Petitioner, as follows:

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 Washington, D.C. 20036  
 (Counsel for Bryan King)

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<sup>6</sup> See *Fredericksburg, Texas*, Memorandum Opinion and Order, 22 FCC Rcd 10883 (MB 2007), *app. for review pending*.

<sup>7</sup> See *Auburn, Alabama*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003) (stating that parties may rely on actions taken in earlier rule making proceedings that are effective but not yet final) ("*Auburn*").

<sup>8</sup> 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 12<sup>th</sup> 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.<sup>9</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.<sup>10</sup>

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)

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<sup>9</sup> 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).

<sup>10</sup> 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

Nazifa Sawez  
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.