

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 11-207
FM Broadcast Stations.)	RM-11517
(Ehrenberg, First Mesa, Kachina Village,)	
Wickenburg, and Williams, Arizona))	
)	
(Ehrenberg, First Mesa, and Kachina Village,)	RM-11518
Arizona))	
)	and
Application of)	
Univision Radio License Corporation)	File No. BPH-20080915AFP
KHOV-FM, Wickenburg, Arizona)	

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: December 21, 2011

Released: December 23, 2011

Comment Date: February 20, 2012
Reply Comment Date: March 6, 2012

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two mutually exclusive proposals that were previously being considered in another proceeding.¹ First, we have a Petition for Rule Making (“Williams Petition”)² filed by Rocket Radio, Inc. (“Rocket Radio”). Second, there is a Petition for Rule Making and hybrid Application (“Wickenburg Petition and Application”)³ filed by Univision Radio License Corporation (“Univision”), licensee of Station KHOV-FM, Wickenburg, Arizona. We commence this proceeding in order to solicit comment on these proposals because the Needles Proceeding is being terminated without reaching them.

2. **Background.** The Needles Notice proposed the allotment of FM Channel 287B1 at Needles, California.⁴ In response to the *Needles Notice*, Rocket Radio and Univision filed the Williams Petition and the Wickenburg Petition and Application, respectively, on September 15, 2008. These proposals were accepted as counterproposals in the Needles rule making proceeding.⁵ Simultaneously with the release of

¹ See *Needles, California, Ehrenberg and First Mesa Arizona*, Notice of Proposed Rule Making and Order to Show Cause, 23 FCC Red 11129 (MB 2008) (“*Needles Notice*”).

² See RM-11517.

³ See RM-11518 and File No. BPH-20080915AFP, respectively.

⁴ See *Needles Notice*, 23 FCC Red at 11130.

⁵ See *Public Notice*, Report No. 2883, March 10, 2009.

this *Notice of Proposed Rule Making and Order to Show Cause* the staff is dismissing the Needles allotment proposal because no party filed a continuing expression of interest in the proposed allotment.⁶ The *Needles R&O* also finds that the Williams Petition and the Wickenburg Petition and Application should not have been accepted as counterproposals in the Needles rule making proceeding because neither of these proposals was mutually exclusive with the allotment proposals in the *Needles Notice*.⁷ Finally, the *Needles R&O* terminated this rule making proceeding.⁸

3. *Williams Petition*. In the first of these proposals, Rocket Radio requests the allotment of FM Channel 287C2 at Williams, Arizona. To accommodate the Williams allotment, Rocket Radio proposes channel changes for two vacant allotments. Specifically, it proposes the substitution of Channel 228C2 for vacant Channel 286C2 at Ehrenberg, Arizona, and the substitution of Channel 281C for vacant Channel 247C at First Mesa, Arizona. Furthermore, to facilitate the Williams allotment, Rocket Radio requests that we issue an Order to Show Cause to Univision as to why its license for Station KHOV-FM, Wickenburg, Arizona, should not be changed from Channel 287C2 to Channel 286C2 and to Grenax Broadcasting II, LLC (“Grenax”) as to why its license for Station KBTK(FM), Kachina Village, Arizona, should not be modified from Channel 286C2 to Channel 246C2. With respect to these involuntary channel changes, Rocket Radio states that it will reimburse Univision and Grenax for their reasonable expenses in changing channels. Rocket Radio also asserts that it concurrently filed a construction permit application for the requested channel in Williams, Arizona, and paid the necessary filing fee.⁹

4. In support of its proposal, Rocket Radio states that the allotment at Williams would provide a second local service at Williams (population 2,842)¹⁰ and a new FM service to 8,405 persons. In addition, Rocket Radio contends that the Williams allotment would provide a first or second aural reception service to 558 persons, depending upon whether Station KYET(AM), which was dark at the time the Williams Petition was filed, is included.¹¹ Finally, Rocket Radio states that Williams is a community for allotment purposes because the Commission has previously allotted an FM channel to this community and the community has other indicia of community status such as a local government and schools.

5. *Wickenburg Petition and Application*. In the second proposal, Univision requests the upgrade of its Station KHOV-FM, Wickenburg, from Channel 287C2 to Channel 286C0 in the Wickenburg Application. To accommodate this proposal, Univision filed the Wickenburg Petition, proposing the same channel substitutions for the vacant allotments at Ehrenberg and First Mesa proposed by the Williams Petition. Likewise, Univision requests that we issue an Order to Show Cause to Grenax for the same involuntary channel to Station KBTX(FM), Kachina Village, proposed by the Williams Petition. Univision states that it will reimburse Grenax for its reasonable expenses associated with changing its channel, pursuant to Commission policy. In support of its Wickenburg Petition and Application, Univision contends

⁶ See *Needles, California, Ehrenberg, First Mesa, Kachina Village, Wickenburg, and Williams, Arizona*, Report and Order, DA 11-2059, rel. Dec. 23, 2011, at ¶ 6 (“*Needles R&O*”).

⁷ *Id.*, at ¶ 7.

⁸ *Id.*

⁹ See File No. BNPH-20080915AEP

¹⁰ Station KWMX(FM) is currently licensed to Williams, Arizona. Station KYET(AM) is also licensed to Williams, but a construction permit application was granted to change KYET(AM)’s community of license to Golden Valley, Arizona. See File No. BP-20090202AVS.

¹¹ See Williams Petition, at 3. Station KYET(AM) resumed operation on April 15, 2011, at the construction permit site for Golden Valley, Arizona.

that the upgrade of its Station KHOV-FM will result in the provision of service to an additional 1,315,327 people.

6. **Discussion. Mutual Exclusivity and Cut-Off Rules.** As a preliminary matter, the Wickenburg Application and the Williams Petition are mutually exclusive because: (1) Channel 287C2 at Williams conflicts with Channel 286C0 at Wickenburg under the minimum distance separation requirements;¹² and (2) both proposals were filed on the same day, September 15, 2008.¹³ Therefore, as explained in the *Needles R&O*, they will be treated together in this proceeding.¹⁴ However, the Wickenburg Application is cut off vis-à-vis any subsequently filed proposals because, as a minor change application, it receives cut-off protection as of the date it is filed.¹⁵ Accordingly, in this proceeding we will only entertain counterproposals to the Williams Petition, and any counterproposals filed must protect both the allotment and application sites specified in the Wickenburg Application for Channel 286C0 at Wickenburg.¹⁶

7. *Williams Petition.* We believe that the public interest would be served by proposing the allotment of Channel 287C2 at Williams because it would provide a second local service to that community. It would also provide a new FM service to 8,405 persons. While Rocket Radio claims that the Williams allotment would provide a first or second aural service to 558 persons, a staff engineering analysis reveals that the proposed allotment of Channel 287C2 at Williams would provide a first aural reception service to 16 persons and a second aural reception service to 417 persons.¹⁷ The parties are invited to submit updated showings regarding any first or second reception services that would result from this allotment and to comment on whether any of these figures are *de minimis* under Commission policy¹⁸ and would thus not trigger FM Priorities (1) or (2) for purposes of comparison with other mutually exclusive proposals.

¹² See 47 C.F.R. § 73.207. Specifically, the actual distance between the proposed reference site for Channel 287C2 at Williams and the reference site for Channel 286C0 at Wickenburg is approximately 131 kilometers, whereas the required distance between these channels is 176 kilometers.

¹³ See 47 C.F.R. § 73.208(a)(3)(iii) (providing that a rulemaking petition to amend the FM Table of Allotments not meeting the minimum distance separation requirements specified in a pending minor change application will not be considered unless it was filed no later than the date of the minor change application). See also *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd 4917 (1992), *recon. granted in part and otherwise denied*, Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993).

¹⁴ See *Needles R&O*, at ¶ 13.

¹⁵ See 47 C.F.R. § 73.3573(f).

¹⁶ We recognize that counterproposals may be filed against the Wickenburg Petition's allotment proposals at Ehrenberg, First Mesa, and Kachina Village, because, as rulemaking proposals, they are not cut-off on the day filed. However, these allotment proposals are the same as those in the Williams Petition. Therefore, any counterproposals filed against these proposed allotments in the Williams Petition will also be treated as counterproposals to the Wickenburg Petition.

¹⁷ The difference between Rocket Radio's and the staff's figures appears due to the fact that Rocket Radio has used actual terrain for predicting the service contours of FM stations and the staff has used uniform terrain for FM stations as required by Commission policy. See *Emmetsburg Sanborn, and Sibley, Iowa, and Brandon, South Dakota*, Memorandum Opinion and Order, 24 FCC Rcd 5868, 5869 (2009) (clarifying that calculations of the number of persons within an allotment's proposed service area are based upon a presumption of uniform terrain). In addition, the staff's analysis takes into account the relocation of Station KYET(AM) to Golden Valley, Arizona.

¹⁸ See, e.g., *Seabrook, Hunstville, et al., Texas*, Memorandum Opinion and Order, 10 FCC Rcd 9360, 9362 (1992) (finding that a second aural service to 455 persons is *de minimis* and not entitled to a preference under Priority 2).

8. A staff engineering analysis has determined that Channel 287C2 can be allotted to Williams, in conformity with the Commission's Rules, provided there is a site restriction of 2.1 kilometers (1.3 miles) northeast at reference coordinates 35-15-57 NL and 112-10-47 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. Because the Ehrenberg and Wickenburg allotments are located within 320 kilometers of the Mexican border, Mexican concurrence in these allotments has been requested.

9. *Wickenburg Application.* We also believe that the public interest would be served by considering the Wickenburg Application as it could result in the provision of service to an additional 1,315,327 people and treating it as a counterproposal to the Williams Petition in view of their mutual exclusivity. Both Rocket Radio and Univision are invited to submit comments, seeking to demonstrate why their proposals better serve the public interest under the FM allotment priorities.¹⁹ In making such showings, the parties are reminded that rulemaking petitions for new FM allotments are subject to the revised procedures for FM allotment proceedings.²⁰ Under these revised procedures, greater weight is to be given under Priority (4) to proposals to underserved areas.²¹ Accordingly, Rocket Radio and Univision are invited to provide information regarding whether any areas or population would receive a third, fourth, and/or fifth reception service. Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

10. A staff engineering analysis reveals that Channel 286C0 can be allotted to Wickenburg, as specified in the Wickenburg Application at the § 73.215 reference coordinates 34-11-23 NL and 112-45-18 WL.²² The § 73.207 allotment coordinates for Channel 286C0 at Wickenburg are 34-04-17 NL and 112-45-23 NL. Any counterproposals filed must protect both the § 73.215 reference site, and the § 73.207 allotment reference site. Further, the channel substitutions at Ehrenberg, First Mesa, and Kachina Village, which were proposed in the Wickenburg Petition, can be made at the reference coordinates set forth above with respect to the Williams Petition.

11. *Order to Show Cause.* We are issuing an *Order to Show Cause* directed to Univision, licensee of Station KHOV-FM, Wickenburg, to show cause why its license should not be modified to specify operation on Channel 286C2 to accommodate Rocket Radio's proposal. In addition, we are issuing an *Order to Show Cause* directed to Grenax, licensee of Station KFLX(FM), Kachina Village, to show

¹⁹ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

²⁰ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2576. ¶ 35 ("The revised procedures will apply, however, to all pending petitions to amend the FM Table of Allotments, and to all other open FM allotment proceedings and non-final FM allotment orders").

²¹ *Id.*

²² Because the allotment of Channel 286C0 at the Wickenburg Application site is located within 320 kilometers of the Mexican border, Mexican concurrence has also been requested for this channel.

cause why its license should not be modified to Channel 246C2 in lieu of Channel 286C2 to accommodate either Rocket Radio's proposal or Univision's proposal.

12. 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.²³

13. 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 February 20, 2012, file written statements showing with particularity why its respective 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(s) to furnish additional information. If the licensee(s) 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(s), deny the modification(s), or set the matter of modification(s) for hearing. If no written statement(s) is (are) filed by the date referred to above, the licensee(s) will be deemed to have consented to the modification(s) as proposed in this *Notice of Proposed Rule Making and Order to Show Cause* and a final Order will be issued if the modification(s) is (are) found to be in the public interest.

14. The Audio Division 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 Broadcasting)

15. **Conclusion/Administrative Matters.** Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>
		<u>Proposed</u>
Williams, Arizona	-----	287C2
Ehrenberg, Arizona	286C2	228C2
First Mesa, Arizona	247C	281C

²³ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, Order, 2 FCC Rcd 3327 (1987).

16. We also seek comment on whether to modify the Media Bureau's Consolidated Data Base System to reflect Channel 286C2 at Wickenburg, Arizona, as the reserved assignment for Station KHOV-FM in lieu of Channel 287C2, and Channel 246C2 at Kachina Village, Arizona, as the reserved assignment for Station KBTX(FM) in lieu of Channel 268C2.

17. 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 by paragraph 2 of the *Appendix* before a channel will be allotted. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before February 20, 2012, and reply comments on or before March 6, 2012, 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. Counterproposal filed in this proceeding need only protect FM Station KHOV-FM, Wickenburg, Arizona, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioner or its counsel, as follows:

Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor, Flour Mill Building
Washington, DC 2007-3501
(Counsel to Rocket Radio, Inc.)

Scott R. Flick, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
(Counsel to Univision Radio License Corporation)

18. 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 the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **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.**

19. 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.²⁴ 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* 44 U.S.C. 3506(c)(4).

20. For further information concerning a proceeding listed above, contact Andrew J. Rhodes or Rolanda F. Smith, 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 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 the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

²⁴ *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 (February 9, 1981).

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) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they 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. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.