

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

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|---------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 13-250 |
| Table of Allotments, |) | RM-11705 |
| FM Broadcast Stations. |) | |
| (Tohatchi, New Mexico) |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 1, 2014

Released: May 2, 2014

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: a *Notice of Proposed Rule Making* (“*Notice*”)¹ issued in response to a Petition for Rule Making (“*Petition*”) filed by Navajo Nation (“*Petitioner*”), proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules,² by allotting FM Channel 268C2 at Tohatchi, New Mexico, as a first local Tribal Allotment and a first local service to the community.³ Comments were filed separately by *Petitioner* and The Navajo Nation Telecommunications Regulatory Commission (“*NNTRC*”).⁴ No other comments were received. For the reasons discussed below, we grant the *Petition* and allot Channel 268C2 at Tohatchi, New Mexico to the FM Table of Allotments as a Tribal Allotment.

2. **Background.** In *Rural Radio*,⁵ the Commission concluded that the public interest would be served by establishing a Section 307(b) priority in favor of Tribes and Tribal Entities proposing the allotment of FM channels to serve Tribal Lands.⁶ *Petitioner*, a federally-recognized Tribe, certifies that its proposal meets the requirements established in *Rural Radio* for a Tribal Priority. Specifically, *Petitioner* provides evidence that: at least 50 percent of the proposed principal community contour would cover Navajo Reservation; Tohatchi, the proposed community of license, is located on Navajo Reservation (Tribal Land). Tohatchi is a census-designated place (CDP) with a 2010 U.S. Census

¹ *Tohatchi, New Mexico*, Notice of Proposed Rule Making, 28 FCC Rcd 1999 (MB 2013).

² 47 C.F.R. § 73.202(b).

³ *Petitioner* also filed an associated FCC Form 301 application. See FCC File No. BNP-20130710ACW.

⁴ *NNTRC* was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) (“*NPRM*”); First Report and Order, 25 FCC Rcd 1583 (2010) (“*First R&O*”); Second Report and Order, 26 FCC Rcd 2556 (2011) (“*Second R&O*”); and Third Report and Order, 26 FCC Rcd 17642 (2011) (“*Third R&O*”) (collectively, “*Rural Radio*”).

⁶ *Rural Radio*, First R&O, 25 FCC Rcd at 1596-97. See also *NPRM*, 24 FCC Rcd at 5248, n.29 (defining “*Indian Tribe[s]*” and “*Federally-Recognized Indian Tribes*”), and n.30 (defining “*Tribal Lands*”).

population of 808 persons.⁷ Petitioner and NNTRC filed comments supporting the allotment proposed in the *Notice*.

3. **Discussion.** We find that Petitioner's proposal satisfies the requirements for a Tribal Allotment and the public interest will be served by the allotment of Channel 268C2 at Tohatchi, New Mexico, as a Tribal Allotment. This Tribal Allotment will serve the public interest by providing vital radio service to Tohatchi and surrounding Navajo Nation Tribal Lands, and by enabling the Petitioner to set its own communications priorities and goals with respect to this new service. Moreover, the allotment will further the public interest by providing a first local transmission service at Tohatchi, New Mexico. A staff engineering analysis confirms that Channel 268C2 can be allotted to Tohatchi consistent with the minimum distance separation requirements of the Commission's Rules with no imposition of a site restriction at reference coordinates 35-54-37 NL and 108-46-26 WL.

4. **Conclusion.** Accordingly, IT IS ORDERED, That effective June 16, 2014, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED as follows:

| <u>Community</u> | <u>Channel Number</u> |
|----------------------|-----------------------|
| Tohatchi, New Mexico | 268C2 ⁸ |

5. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁹ The Commission will release in the near future a public notice announcing a Threshold Qualifications Window. Any qualifying applicant may file an FCC Form 301 for this channel during the window.¹⁰

6. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

⁷ Tohatchi has its own post office and zip code (87325). It has a political subdivision known as a Chapter of the Navajo Nation, with a local government headed by a locally-elected Chapter President. Tohatchi is the site of one of the Navajo Area Health Service's newest medical facilities, which provides ambulatory care to approximately 8,000 residents of the area. The Navajo Nation Division of Public Safety maintains a youth detention facility in Tohatchi. Tohatchi has three public schools, Tohatchi Elementary School, Tohatchi Middle School and Tohatchi High School, and the Ch-Ooshgai Community School, which operates a grant school from kindergarten through eighth grade. Tohatchi also has businesses and a number of churches.

⁸ This channel is reserved as a Tribal Allotment.

⁹ See 5 U.S.C. § 801 (a)(1)(A).

¹⁰ See Third R&O, 26 FCC Rcd at 17645-46. See also Second R&O, 26 FCC Rcd at 2588-90. Should no applicant meeting threshold qualifications file FCC Form 301 during the Threshold Qualifications Window (and should the proponent request that its already-filed Form 301 application not be immediately processed), the Tribal Allotment will be included in the inventory for a broadcast auction at a later date. In that event, only threshold qualified applicants, including the original proponent, would be permitted to participate in the auction. Third R&O, 26 FCC Rcd at 17649.

7. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau