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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 14-46
Table of Allotments,	)	RM-11717
FM Broadcast Stations	)	
(Rough Rock, Arizona)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 1, 2014 **Released: May 2, 2014**

Comment Date: June 23, 2014
Reply Date: July 8, 2014

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by The Navajo Nation ("Petitioner"), and an associated FCC Form 301 application.[1] Petitioner proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by allotting FM Channel 258C2 at Rough Rock, Arizona, as a first local service. Petitioner seeks a Tribal Priority for the proposed allotment. In this Notice of Proposed Rule Making, we seek comment on that proposal.

2. **Background.** In *Rural Radio*,[2] the Commission concluded that it would serve the public interest to establish a Section 307(b) priority in favor of Tribal Entities proposing the allotment of FM radio channels to serve Tribal lands.[3] The rationale for this determination was that "the establishment of an allocation priority for the provision of radio service to tribal lands by Indian tribal government-owned stations will advance our Section 307(b) goals and serve the public interest by enabling Indian tribal governments to provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing."[4]

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[1] *See* FCC File No. BNPH-20140113ABW.

[2] *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*").

[3] *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").

[4] *Rural Radio,* Third R&O, 26 FCC Rcd at 1588.

3. The Commission instituted several requirements for a Tribal Allotment. Those requirements pertain to the identity of the applicant, the land and population covered by the principal community contour, the location of the proposed community, and the availability of radio services, especially Tribally owned or Tribal Entity owned radio services, at the proposed community.[5] Upon award of a Tribal Allotment, within a reasonable period of time the Commission will release a public notice announcing a Threshold Qualifications Window, during which any qualifying applicant will be afforded the opportunity to file FCC Form 301 for the channel allotted as a Tribal Allotment.[6]

4. Petitioner states that the Navajo Nation is a federally recognized Tribe, and it meets the requirements established in *Rural Radio* for the Tribal Priority.[7] Petitioner further states that Rough Rock, Arizona is a community for allotment purposes. Rough Rock is a census-designated place (CDP) with a 2010 census population of 414 persons. Rough Rock is a political subdivision known as a Chapter of the Navajo Nation. Rough Rock has a Chapter House community center and a government that serves the people of Rough Rock. In addition, Petitioner states that Rough Rock Community School teaches the children of the community from kindergarten through high school, and is also the largest employer in Rough Rock. Finaly, Petitioner states that Rough Rock has a Trading Post/Gas Station, and two churches, the Rough Rock Friends Church and a Native American Church.

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[5] In order to satisfy the prerequisites for a Tribal Allotment, the following requirements must be met: "(A) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes…; (b)(1)At least 50 percent of the area within the proposed principal community contour is over that Tribe's Tribal Lands, or (2) the proposed principal community contour (a) encompasses 50 percent or more of that Tribe's Tribal Lands, (b) serves at least 2,000 people living on Tribal Lands, and (c) the total population on Tribal Lands residing within the proposed station's service contour constitutes at least 50 percent of the total covered population…; (C) The proposed community of license must be located on Tribal Lands; and (D) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license." *Rural Radio*, Third R&O, 26 FCC Rcd at 17646-47. *See also* First R&O, 25 FCC Rcd at 1596-97; and Second R&O, 26 FCC Rcd at 2585-87.

[6] *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, may specify the Tribal Allotment in their applications to participate in the auction (FCC Form 175). Third R&O, 26 FCC Rcd at 17649.

[7] Petitioner provides evidence that: more than fifty percent of the proposed principal community contour is within the Navajo Reservation; Rough Rock, the proposed community of license, is located on the Navajo Reservation; and the proposed facility will constitute a first local Tribally-owned commercial transmission service at Rough Rock.

5. **Discussion.** The facts presented by Petitioner are sufficient to support consideration of the allotment of FM Channel 258C2 at Rough Rock, Arizona, as a Tribal Allotment. The proposed Tribal Allotment of FM Channel 258C2 could serve the public interest by providing vital radio service to Rough Rock and surrounding Navajo Nation Tribal lands, and by enabling the Petitioner to set its own communications priorities and goals with respect to such service. Moreover, the allotment could further the public interest by providing a first local service at Rough Rock. Finally, the proposed change in the FM Table of Allotments complies with the technical requirements of the Commission's Rules.

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), by the allocation of FM Channel 258C2 at Rough Rock, Arizona, as a Tribal Allotment, as set forth below:

Community	Present	Proposed
Rough Rock, Arizona	----	258C2

Proposed Coordinates for Channel 258C2 at Rough Rock, Arizona: 36-21-08 NL and 109-49-54 WL, with the imposition of a site restriction 7.1 km (4.4 miles) southeast of Rough Rock.

7. 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.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,[8] interested parties may file comments on or before June 23, 2014, and reply comments on or before July 8, 2014, 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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2300 N Street, N.W.
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9. 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

[8] *See* 47 C.F.R. §§1.415 and 1.419.

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.**

10. 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.[9] 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.[10]

11. For further information concerning these proceedings, contact Rolanda F. Smith, Media Bureau, at (202) 418-2700. 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

[9] *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 FR 11549 (February 9, 1981).

[10] *See* 44 U.S.C. 3506(c)(4).

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

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 required to file comments expressing the proponent's continuing interest in the proposed allotment and restating 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.