

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

In the Matter of
Amendment of Section 73.202(b)
FM Table of Allotments,
FM Broadcast Stations.
(Desert Hills, Arizona)
MB Docket No. 18-27
RM-11796

NOTICE OF PROPOSED RULEMAKING

Adopted: February 1, 2018

Released: February 2, 2018

Comments Date: March 26, 2018

Reply Comments Date: April 10, 2018

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by L. Topaz Enterprises, Inc. (Petitioner), proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, by allotting Channel 292A at Desert Hills, Arizona. In compliance with Commission procedures, Petitioner filed an FCC Form 301 application and paid the necessary filing fees.

2. Background. Petitioner proposes the allotment of Channel 292A at Desert Hills, Arizona, as a second local service. Desert Hills is a Census Designated Place (CDP) with a 2010 U.S. Census population of 2,245 persons, which is located in Mojave County, Arizona. Petitioner states that Desert Hills has several retail establishments and churches, as well as a local fire station and public middle school. Moreover, Petitioner explains that the proposed allotment will provide additional diversity and an outlet for local residents. Finally, Petitioner certifies that if FM Channel 292A at Desert Hills is allotted, Petitioner will participate in the auction for that channel, and if successful in obtaining a construction permit, promptly construct the proposed station.

3. Discussion. The proposed change in the FM Table of Allotment warrants consideration because it would provide a second local service at Desert Hills, Arizona. Although Desert Hills is not an

1 Petitioner is also the permittee of KZNI(FM), Owyhee, Nevada, Facility ID 198801, and KENT(AM), Enterprise, Nevada, Facility ID 160781.

2 Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, 21 FCC Rcd 14212, 14223, para. 18 (2006).

3 File No. BNPH-20171004AAO.

4 KRRK(FM), Facility ID 38214, is currently licensed at Desert Hills, Arizona.

5 United States Census Bureau, American Fact Finder, searchable at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml# (last visited Jan. 9, 2018).

6 Petition at 1.

7 Id.

8 Id.

incorporated community, it is a CDP, and thus satisfies a minimum requirement for being considered a community for allotment purposes.⁹ A staff engineering analysis indicates that Channel 292A can be allotted to Desert Hills, Arizona, consistent with the minimum distance separation requirements of the Commission's rules, without a site restriction. The reference coordinates are 34-32-58 NL and 114-22-2 WL. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the rules, with respect to Desert Hills, Arizona:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Desert Hills, Arizona	----	292A

4. The Commission's authority to institute rulemaking 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 paragraph 2 of the *Appendix* requires a showing of continuing interest before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁰ interested parties may file comments on or before March 26, 2018, and reply comments on or before April 10, 2018, 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:

Dale A. Ganske
L. Topaz Enterprise, Inc.
3325 Conservancy Lane
Middleton, WI 53562

6. Parties must file an original and one copy of each filing.¹¹ 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 the FCC Headquarters Building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 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, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to FCC Headquarters at 445 12th Street, S.W., Washington, D.C. 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs/>. Online filing is optional. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.¹² **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, and Office of the Secretary. Any paper 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**

⁹ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC Rcd 2d 88, 101, para. 33 (1982).

¹⁰ 47 CFR §§1.415 and 1.419.

¹¹ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Reorganization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1602, para. 21 (2011).

¹² 47 CFR § 1.419(d).

Secretary.¹³ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rulemaking proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules.¹⁴ 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 107-198.¹⁵

8. For further information concerning these proceedings, contact Adrienne Y. Denysyk, Media Bureau, at (202) 418-2651. For purposes of these restricted notice and comment rulemaking proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rulemaking* 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

¹³ *Id.* at § 1.7.

¹⁴ *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rulemaking to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (Feb. 9, 1981).

¹⁵ 44 USC § 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 Rulemaking* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* 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. 47 C.F.R. § 1.420(d).

(b) Petitions for rulemaking 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 Rulemaking* 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, DC 20554. Alternatively, parties may submit the filing electronically at <http://apps.fcc.gov/ecfs/>. Online filing is optional.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.419(b), an original and one copy of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments. 47 C.F.R. § 1.419(d).

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, DC. All filings are also available at <http://apps.fcc.gov/ecfs/>.