

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

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| In the Matter of |) | |
| |) | |
| Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations (Snowflake, Arizona; Millerton, Oklahoma; Powers, Oregon; Mount Enterprise and Paint Rock, Texas; Hardwick, Vermont; and Meeteetse, Wyoming) |) | MB Docket No. 21-502 |

NOTICE OF PROPOSED RULEMAKING

Adopted: December 23, 2021

Released: December 23, 2021

Comment Date: February 14, 2022

Reply Comment Date: March 1, 2022

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division, on its own motion, proposes the deletion of seven vacant allotments in various communities in Arizona, Oklahoma, Oregon, Texas, Vermont and Wyoming. We tentatively conclude that it is in the public interest to delete seven vacant allotments, as listed in paragraph 3 below, that have been offered in two FM auctions. No bids were entered for these allotments in the recently completed FM Auction 109. These permits are now considered unsold, and the allotments remain vacant. Deletion of these allotments may create other opportunities in nearby communities for new FM allotments or upgrades of existing stations. Therefore, we believe that the proposed deletion of these vacant allotments may promote a more effective and efficient use of the FM broadcast spectrum.

2. Interested parties must file comments expressing an interest in the vacant allotments to prevent their removal. Moreover, interested parties must provide an explanation as to why they did not participate in prior auction events for any permit in which an interest is expressed.

3. Accordingly, we seek comments on the proposed amendments of the FM Table of Allotments, section 73.202(b) of the Commission’s Rules, with respect to the communities listed below, as follows:

| <u>Construction Permit No.</u> | <u>Community</u> | <u>Present Allotment</u> | <u>Proposed Allotment</u> |
|--------------------------------|-------------------------|--------------------------|---------------------------|
| MM-FM1183-C2 | Snowflake, Arizona | 259C2 | ----- |
| MM-FM1093-C2 | Millerton, Oklahoma | 265C2 | ----- |
| MM-FM1099-C2 | Powers, Oregon | 293C2 | ----- |
| MM-FM1138-A | Mount Enterprise, Texas | 279A | ----- |
| MM-FM1143-C3 | Paint Rock, Texas | 296C3 | ----- |
| MM-FM325-A | Hardwick, Vermont | 290A | ----- |

MM-FM1171-C

Meeteetse, Wyoming

259C

4. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Interested parties expressing interest in the allotment will be expected to answer whatever questions are presented in initial comments. Interested parties of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. Interested parties must 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. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.¹

5. *Cut-off Protection.* The following procedures will govern the consideration of the 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.²
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.³

6. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,⁴ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵ All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, 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 Secretary.⁶ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

¹ 47 CFR § 1.420(d).

² 47 CFR § 1.420(j).

³ 47 CFR § 1.420(g)(2).

⁴ 47 CFR §§ 1.415, 1.419, and 1.420.

⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁶ See 47 CFR § 1.7.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 45 L Street, NE, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁷

7. *Service.* Pursuant section 1.420 of the Rules,⁸ 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 petitioners. 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.⁹

8. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰ For purposes of this restricted notice and comment rulemaking proceeding, 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.¹¹ 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.¹² 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 a particular docket unless the Commission specifically waives this service requirement.¹³ Any comment that 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*

⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁸ 47 CFR § 1.420.

⁹ See 47 CFR § 1.420(a), (b) and (c).

¹⁰ 47 CFR §§ 1.1200 *et seq.*

¹¹ 47 CFR § 1.1208.

¹² 47 CFR § 1.1204(a)(10).

¹³ 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

presentation and shall not be considered in the proceeding.

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

10. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,¹⁴ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.¹⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.¹⁶ 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 2002.¹⁷

11. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

12. *Additional Information.* For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

13. **IT IS FURTHER ORDERED** that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, section 73.622(i) of the Rules, 47 CFR § 73.202(b), as set forth in this Notice of Proposed Rulemaking, and this Notice of Proposed Rulemaking **IS ADOPTED**.

14. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the Rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments and reply comments on the *NPRM* in MB Docket No. 21-502 on or before February 14, 2022 and reply comments on or before March 1, 2022.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

¹⁴ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹⁵ 47 CFR § 73.602(b).

¹⁶ See 44 U.S.C. §§ 3501-3520.

¹⁷ See 44 U.S.C. § 3506(c)(4).