

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

In the Matter of)
)
Amendment of section 73.202(b), Table of) MB Docket No. 22-373
Allotments, FM Broadcast Stations (South Padre) RM-11933
Island, Texas)
)
Application for Construction Permit to Modify) File No. 0000195197
Station KRIX(FM), Port Isabel, Texas) Facility ID No. 198768
)

NOTICE OF PROPOSED RULEMAKING

Adopted: November 9, 2022

Released: November 9, 2022

Comment Date: January 3, 2023

Reply Comment Date: January 18, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by Eduardo Gallegos (Petitioner), proposing the substitution of Channel 288A for vacant Channel 237A at South Padre Island, Texas to accommodate the above-captioned hybrid modification application (Application) for Station KRIX(FM) that proposes the substitution of Channel 237A for Channel 288A at Port Isabel, Texas and modification of Station KRIX(FM)'s license to specify operation on Channel 237A at Port Isabel, Texas.

II. BACKGROUND

2. Petitioner requests the substitution of Channel 288A for vacant Channel 237A at South Padre Island, Texas in order to accommodate its hybrid Application and modification of the Station KRIX(FM) facilities. Petitioner claims that grant of the proposal will permit Station KRIX(FM) to immediately provide enhanced service to the community of Port Isabel. Petitioner states that Mexican concurrence has already been obtained for Channel 288A when used previously for Port Isabel, and the proposed reference coordinates for proposed Channel 288A at South Padre Island are further away from the coordinates previously approved for Channel 288A so no further International coordination with Mexican authorities is required. Petitioner commits to filing comments for any necessary expression of interest and pledges to expeditiously implement Station KRIX(FM) on Channel 237A at Port Isabel, Texas upon issuance of the construction permit.

1On December 8, 2021, the Audio Division cancelled the license of station DKZSP, Fac. ID No. 56473, Channel 237A, South Padre Island, TX. See Broadcast Actions, Report No. 50134, released December 13, 2021. Channel 237A at South Padre Island, Texas is, therefore, considered a vacant allotment resulting from the license cancellation of FM station DKZSP.

2 See FCC File No. 0000195197 (filed July 18, 2022) (Application). The proposed Channel 237A at Port Isabel, Texas is located 320 kilometers from the Mexican Border. Mexican concurrence has been received.

3 See Port Isabel, Texas, Report and Order, 21 FCC Rcd 1510 (MB 2006).

III. DISCUSSION

3. We believe that the substitution of Channel 288A for vacant Channel 237A at South Padre Island, Texas warrants consideration. We note that our staff engineering analysis determined based on uniform terrain that the proposed 70 dBu city-grade signal does not cover the entire principal community as required by section 73.315(a) of the Commission's rules.⁴ The staff engineering analysis determined that the 70 dBu signal provides coverage to only 98% that encompasses the entire population of South Padre Island. South Padre Island is a resort town that is a barrier island off the southern coast of Texas near the Gulf of Mexico. The staff engineering analysis confirmed that the small unserved area is unpopulated, very flat, and has no distinguishing labels located across from Ocean Blvd near the beach access north of Edwin King Atwood Park. Commission practice is generally to deny allocation requests in situations where the principal city-grade coverage does not meet the requirements of Section 73.315(a).⁵ We conclude, under these unique circumstances, that the proposal is in "substantial compliance with section 73.315(a) given the fact that the unserved area is considered unpopulated and that the proposed 70 dBu signal would provide coverage to 98% of South Padre Island encompassing the entire population."⁶

4. A staff engineering analysis indicates that Channel 288A can be allotted to South Padre Island, Texas, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 11 km (7 miles) south of the community. The reference coordinates are 26-01-30 NL and 97-09-15 WL.⁷ Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,⁸ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
South Padre Island, Texas	237A ⁹	288A

IV. PROCEDURAL MATTERS

5. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner 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

⁴ 47 CFR § 73.215(a).

⁵ See *Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina*, Memorandum Opinion and Order, 3 FCC Rcd 4108 (1988) corrected, 3 FCC Rcd 4374 (1988) (stating that it is standard Commission practice to deny waivers of Section 73.315(a) of the Rules at the allotment stage, and requests for waiver of the city grade coverage requirement of Section 73.315 is generally limited to the application context).

⁶ See *Willows Creek, California*, Report and Order, 26 FCC Rcd. 1986 (MB 2011)(allotment approved, where the 70 dBu city-grade signal contour would not cover the entire Census Designated Place of Willow Creek but would provide coverage to the entire population); see also, *Beatty and Goldfield, Nevada*, Notice of Proposed Rule Making, 23 FCC Rcd 14851 (MB 2008), and Report and Order, 24 FCC Rcd 2225 (MB 2009) (together, "*Beatty*") (allotment approved, where 70 dBu city-grade signal contour would not cover entire census-designated boundary, but would encompass entire town site); see also cases cited in *Beatty*, Notice of Proposed Rule Making, 23 FCC Rcd 14851, n.5.

⁷ The proposed allotment of Channel 288A at South Padre Island, Texas is located 320 kilometers from the Mexican Border. Mexican concurrence has previously been received.

⁸ 47 CFR § 73.202(b).

⁹ Vacant Channel 237A at South Padre Island is not currently listed in the FM Table of Allotments.

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.¹⁰

6. *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.¹¹
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹²

7. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,¹³ 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).¹⁴

- **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.
 - 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.
 - Currently, the Commission does not accept 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. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.¹⁵

8. *Service.* Pursuant section 1.420 of the Rules,¹⁶ 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

¹⁰ 47 CFR § 1.420(d).

¹¹ 47 CFR § 1.420(j).

¹² 47 CFR § 1.420(g)(2).

¹³ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (2020).

¹⁶ 47 CFR § 1.420.

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.¹⁷ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 21st Rd. N
Arlington, VA 22201

9. *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.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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* presentation and shall not be considered in the proceeding.

10. *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.

11. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²² do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.²³ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁴ 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

¹⁷ See 47 CFR §1.420(a), (b) and (c).

¹⁸ 47 CFR §§ 1.1200 *et seq.*

¹⁹ 47 CFR § 1.1208.

²⁰ 47 CFR § 1.1204(a)(10).

²¹ 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).

²² 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).

²³ 47 CFR § 73.202(b).

²⁴ See 44 U.S.C. §§ 3501-3520.

Paperwork Relief Act of 2002.²⁵

12. *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).

13. *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.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

²⁵ See 44 U.S.C. § 3506(c)(4).