

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

In the Matter of)
)
Amendment of section 73.202(b), Table of) MB Docket No. 22-188
Allotments, FM Broadcast Stations (Big Coppitt) RM-11928
Key, Florida))

NOTICE OF PROPOSED RULEMAKING

Adopted: May 17, 2022

Released: May 18, 2022

Comment Date: July 11, 2022

Reply Comment Date: July 26, 2022

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by Spottswood Partners II, Ltd. (Petitioner), requesting the allotment of Channel 265C3 at Big Coppitt Key, Florida, as the community’s first local service. In compliance with the Commission’s procedures,1 Petitioner concurrently filed a construction permit application and paid the necessary filing fee.2

II. BACKGROUND

2. Petitioner claims that Big Coppitt Key, Florida is a community for the allotment purposes.3 In support of this position, Petitioner states that although Big Coppitt Key is an unincorporated community in Monroe County, it is listed in the 2020 U.S. Census with a population of 2,869 persons, and it grew 17 percent from its 2010 U.S. Census population of 2,458 persons. Petitioner states its intention to apply for the channel, if allotted, and participate in FM auction.

III. DISCUSSION

3. Big Coppitt Key, Florida is not incorporated but listed in the U.S. Census as a census designated place (CDP). The Commission has defined a community as geographically identifiable population groupings, which have common local interests.4 The test for determining whether a locality is a community for allotment purposes is not a stringent one.5 This requirement is generally satisfied if the

1 See 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).

2 See FCC File No. 0000187154 (filed March 24, 2022) (Application).

3 Petitioner states that the proposed allotment and facilities would not provide a city-grade signal over more than 50 percent of any urbanized areas, and contends that the proposal to provide a first local service at Big Coppitt Key, Florida does not require any further analysis under the Urbanized Area Service Presumption (UASP). See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2575 ¶ 35 (2011) (Rural 2d R&O).

4 See Revision of FM Assignment Policies and Procedures, Second Report and Order, 90 FCC 2d 88, 98 (1982).

5 See Beacon Broadcasting, Memorandum Opinion and Order, 2 FCC Rcd 3469 (1987) aff’d sub nom; see also New South Broadcasting Corp. v FCC, 879 F. 2d 867 (D.C. Cir 1989)(stating that a specified location must be an identifiable population grouping, separate and apart from all others, and the geographic boundaries of the location

(continued...)

proposed community is either incorporated or listed in the U.S. Census, but incorporation is not a prerequisite to community status. The designation of an area as a CDP raises the presumption that an area is a “community” for allotment purposes, but that presumption is rebuttable.⁶

4. We request the Petitioner to submit additional information demonstrating that Big Coppitt Key is a “community” for allotment purposes. In *Beacon Broadcasting* and *New South Broadcasting Corp*, the key factor in determining the existence of a community is the presence of a community of interest associated with an identifiable population grouping separate and distinct from all others and that the boundaries of the location do not enclose areas or populations more logically associated with some other location. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community.⁷ Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.⁸ The principal test is whether the residents function as and conceive themselves as a community around which their interests coalesce.

5. We believe that the Petitioner’s proposed change in the FM Table of Allotments warrants consideration under Priority (3), because it would provide a first local service at Big Coppitt Key, Florida.⁹ A staff engineering analysis indicates that Channel 265C3 can be allotted to Big Coppitt Key, Florida, consistent with the minimum distance separation requirements of the Commission’s rules (Rules), with a site restriction of 14.5 km (9.0 miles) northeast of the community.¹⁰ The reference coordinates are 24-39-34 NL and 81-32-17 WL. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,¹¹ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Big Coppitt Key, Florida	----	265C3

must not enclose or contain areas or populations more logically identified or associated with some other location).

⁶ See *Stock Island, Florida*, 8 FCC Rcd 343 (MMB 1993); *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (MMB1992); and *East Hemet, California, et al.*, 4 FCC Rcd 7895 (MMB 1989)(denying community status because petitioner failed to identify any other businesses or political, social and commercial organizations which identify themselves with the community in question).

⁷ See *Willows and Dunnigan, California*, Report and Order, 10 FCC Rcd 11522 (1995)(stating that it is an “indicia of community” if local businesses and other establishments in the vicinity identify with a community by including the name of that community in their names).

⁸ See *Hayfield, VA*, 12 FCC Rcd 16373 (MMB 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (MMB 1990), aff’d., 10 FCC Rcd 9831(1995)(stating petitioner must provide sufficient objective evidence indicating the existence of a community or any subjective evidence such as testimony of local residents indicating that they perceive themselves as belonging to a distinct geographical grouping).

⁹ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

¹⁰ 47 CFR § 73.207.

¹¹ 47 CFR § 73.202(b).

IV. PROCEDURAL MATTERS

6. *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 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.¹²

7. *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.¹³
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,¹⁵ 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).¹⁶ 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.¹⁷ 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.
 - 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

¹² 47 CFR § 1.420(d).

¹³ 47 CFR § 1.420(j).

¹⁴ 47 CFR § 1.420(g)(2).

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See 47 CFR § 1.7.

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-19.¹⁸

9. *Service.* Pursuant section 1.420 of the Rules,¹⁹ 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.²⁰ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Stephen Hartzell, Patrick Cross, and Micole Little, Esq.
BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.
Wells Fargo Capitol Center
Suite 1700
Raleigh, North Carolina 27602

10. *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.²¹ 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.²² 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.²³ 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.²⁴ 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*

¹⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁹ 47 CFR § 1.420.

²⁰ See 47 CFR §1.420(a), (b) and (c).

²¹ 47 CFR §§ 1.1200 *et seq.*

²² 47 CFR § 1.1208.

²³ 47 CFR § 1.1204(a)(10).

²⁴ 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.

11. *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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁵ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.²⁶ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁷ 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 2002.²⁸

13. *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).

14. *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 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).

²⁶ 47 CFR § 73.202(b).

²⁷ See 44 U.S.C. §§ 3501-3520.

²⁸ See 44 U.S.C. § 3506(c)(4).