**Before the**

Federal Communications Commission

Washington, D.C. 20554

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

Report and order

**Adopted: August 25, 2022 Released: August 26, 2022**

By the Assistant Chief, Audio Division, Media Bureau:

# introduction

1. The Audio Division has before it a *Notice of Proposed Rule Making,[[1]](#footnote-3)* issued in response to a Petition for Rule Making filed by Spottswood Partners II, Ltd. (Petitioner). Petitioner filed Comments and Reply Comments. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we amend the FM Table of Allotments, section 73.202(b) of the Commission’s Rules,[[2]](#footnote-4) by allotting Channel 265C3 at Big Coppitt Key, Florida.

# Background

1. The *Notice* proposed the allotment of Channel 265C3 at Big Coppitt Key, Florida, as a first local service. Big Coppitt Key is an unincorporated community in Monroe County that is listed in the 2020 U.S. Census as a census designated place (CDP) with a population of 2,869 persons. 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.[[3]](#footnote-5) The *Notice* requested that the Petitioner submit additional information demonstrating that Big Coppitt Key is a “community” for allotment purposes to support the presumption.
2. In its Comments, Petitioner states that Big Coppitt Key is home to a number of establishments which incorporate the community name, such as Big Coppitt Key Mart, Big Coppitt Gun Club, and Big Coppitt First Baptist Church. Petitioner claims that Big Coppitt Key has multiple religious establishments, including: Big Coppitt First Baptist Church, La Premiere Eglise Evangelique, Keys Presbyterian Church, and New Life Tabernacle. Petitioner states that Big Coppitt Key also has a number of civic organizations, such as Big Coppitt Volunteer Fire Rescue (Monroe County Fire Rescue Station) and Habitat for Humanity of Key West and Lower Florida Keys. Additionally, Petitioner contends that Big Coppitt Key has other establishments that are indicative of a permanent, year-round population comprising the community, including but not limited to, the Wilhelmina Harvey Children’s Park, Big Mama’s Alterations and Tailoring, and Keys Animal Care Center. Moreover, Petitioner states that Southern Keys Cemetery, located in Big Coppitt Key, provides a peaceful resting place for deceased residents where their families and loved ones can visit from dawn to dusk. Petitioner reiterates its expression of interest in Channel 265C3 at Big Coppitt Key, Florida. Petitioner states that, if the channel is allotted, it will apply for the channel in any FM auction for the Big Coppitt Key allotment, and it will prosecute its application and promptly construct the facilities in the event the Commission grants its application.[[4]](#footnote-6)
3. In its Reply Comments, Petitioner reaffirms that Big Coppitt Key is a “community” for allotment purposes. Petitioner contends that the proposal will create a preferential arrangement of allotments by providing Big Coppitt Key, Florida with its first local service. Petitioner maintains its interest in the proposed Big Coppitt Key allotment and states that it intends to apply for the channel if it is allotted and, if authorized, it will promptly construct the authorized facilities. No other party filed comments or reply comments.

# Discussion

1. We find that Petitioner has demonstrated that Big Coppitt Key, Florida is a “community” for allotment proposes. We conclude that the public interest would be served by allotting a first local service at Big Coppitt Key, Florida, under Priority (3).[[5]](#footnote-7) 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, with a site restriction of 14.5 km (9.0 miles) northeast of the community.[[6]](#footnote-8) The reference coordinates are 24-39-34 NL and 81-32-17 WL.
2. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[[7]](#footnote-9) do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.[[8]](#footnote-10) This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.[[9]](#footnote-11) 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.[[10]](#footnote-12)

# Ordering Clauses

1. 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, effective October 11, 2022, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

**Community** **Channel No.**

Big Coppitt Key, Florida 265C3

1. The window period for filing applications for Channel 265C3 at Big Coppitt Key, Florida will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in subsequent order.
2. IT IS FURTHER ORDERED, That the Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).
3. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
4. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez

Assistant Chief, Audio Division

Media Bureau

1. *See Big Coppitt Key, Florida,* Notice of Proposed Rule Making, DA-22-540, rel. May 18, 2022 (MB 2022) (“*Notice*”). [↑](#footnote-ref-3)
2. 47 C.F.R. § 73.202(b). [↑](#footnote-ref-4)
3. *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). [↑](#footnote-ref-5)
4. *See* Application File No. 0000187154. [↑](#footnote-ref-6)
5. *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). [↑](#footnote-ref-7)
6. 47 CFR § 73.207. [↑](#footnote-ref-8)
7. *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). [↑](#footnote-ref-9)
8. 47 CFR § 73.202(b). [↑](#footnote-ref-10)
9. *See* 44 U.S.C. §§ 3501-3520. [↑](#footnote-ref-11)
10. *See* 44 U.S.C. § 3506(c)(4). [↑](#footnote-ref-12)