

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

In the Matter of)	
)	
Amendment of section 73.202(b), Table of)	MB Docket No. 23-302
Allotments, FM Broadcast Stations (Lac du)	RM-11965
Flambeau, Wisconsin))	
)	

REPORT AND ORDER

Adopted: December 18, 2023

Released: December 19, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a *Notice of Proposed Rule Making*¹ issued in response to a Petition for Rule Making (Petition) filed by L.D.F. Business Development Corp. (Petitioner), the non-gaming wholly-owned business entity of the Lac du Flambeau Band of Lake Superior Chippewa Indians (LDF Tribe), proposing to amend the Table of Allotments, section 73.202(b) of the Commission's rules,² by allotting FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment and a first local Tribal-owned service to the community.³ Petitioner filed Comments.⁴ No other comments were received. For the reasons discussed below, we grant the Petition and allot FM Channel 225A at Lac du Flambeau, Wisconsin to the Table of Allotments, as a Tribal Allotment.

II. BACKGROUND

2. In *Rural Radio*,⁵ the Commission concluded that the public interest would be served by establishing a section 307(b) priority in favor of Tribes and Tribal Entities proposing the allotment of FM channels to serve Tribal Lands.⁶ The Commission instituted several eligibility criteria to qualify for a

¹ *Lac du Flambeau, Wisconsin*, Notice of Proposed Rule Making, DA-23-813, rel. September 6, 2023 (MB 2023), 2023 WL 5828718 (“Notice”); see also 88 FR 63048 (published September 14, 2023).

² 47 CFR § 73.202(b).

³ Petitioner filed an associated FCC Form 301 application. FCC Application File No. 0000219341.

⁴ Petitioner filed Comments on October 17, 2023.

⁵ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) (*NPRM*); First Report and Order, 25 FCC Rcd 1583 (2010) (*First R&O*); Second Report and Order, 26 FCC Rcd 2556 (2011) (*Second R&O*); *Third Report and Order*, 26 FCC Rcd 17642 (2011) (*Third R&O*) (collectively, *Rural Radio*).

⁶ *First R&O*, 25 FCC Rcd at 1596-97; *NPRM*, 24 FCC Rcd at 5248, n.29 (defining “Indian Tribe[s]” and “Federally-Recognized Indian Tribes”), and n.30 (defining “Tribal Lands”).

Tribal Allotment.⁷ Petitioner, a federally-recognized Tribe,⁸ certifies that its proposal meets the requirements established in *Rural Radio* for a Tribal Priority.⁹ Specifically, Petitioner states that (1) more than fifty percent of the proposed station's principal community contour is over the boundaries of The LDF Tribal Lands;¹⁰ (2) Lac du Flambeau, the proposed community of license, is located on The LDF Tribal Lands;¹¹ and (3) the proposed facility will be the first local Tribal-owned commercial transmission service at Lac du Flambeau.¹² Petitioner filed Comments reiterating its expression of interest in Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment.¹³ Petitioner reaffirms its intention to apply for the channel, if allotted, and promptly build the station on Channel 225A at Lac du Flambeau, in accordance with the facilities specified in its application.¹⁴

III. DISCUSSION

3. We find that Lac du Flambeau is a community for allotment purposes. Lac du Flambeau is a census-designated place (CDP) in the town of Lac Du Flambeau in Vilas County, Wisconsin. The town of Lac du Flambeau has a 2020 U.S. Census population of 3,552 persons,¹⁵ while the CDP of Lac Du Flambeau has a 2020 U.S. Census population of 1,845 persons.¹⁶ Lac du Flambeau is the major community for the LDF Tribe. A staff engineering analysis confirms that the Tribal Reservation would cover 3,518 persons, of whom 3,480 persons (98.9%) reside on the LDF Tribal Lands. Our independent staff research reveals that Lac du Flambeau has two forms of government¹⁷ and confirms that the town of

⁷ In order to satisfy the prerequisites for a Tribal Allotment, the following eligibility criteria must be met: “(A) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes . . . ; (B)(1) At least 50 percent of the area within the proposed principal community contour is over that Tribe’s Tribal Lands, or (2) the proposed principal community contour (a) encompasses 50 percent or more of that Tribe’s Tribal Lands, (b) serves at least 2,000 people living on Tribal Lands, and (c) the total population on Tribal Lands residing within the proposed station’s service contour constitutes at least 50 percent of the total covered population . . . ; (C) The proposed community of license must be located on Tribal Lands; and (D) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license.” (Tribal Allotment Criteria). *Third R&O*, 26 FCC Rcd at 17646-47, para. 8. *See also First R&O*, 25 FCC Rcd at 1596-97, paras. 26-27; *Second R&O*, 26 FCC Rcd at 2561-63, 2586-87, paras. 9-11, 59; 47 CFR § 73.3573, Note 5.

⁸ Petition at 1 (filed August 15, 2023).

⁹ *Third R&O*, 26 FCC Rcd at 17646-47; *First R&O*, 25 FCC Rcd at 1596-97; *Second R&O*, 26 FCC Rcd at 2585-87.

¹⁰ 96.3 percent of the area within the proposed station’s principle community contour is over LDF Tribal Lands, and the new station will serve 98.9% of the tribal population. Petition at 1, *see also* Exhibit 1.

¹¹ *Id.*

¹² Petition at 2.

¹³ Comments at 1.

¹⁴ *Supra*, note 3.

¹⁵ United States Census Bureau, <https://data.census.gov/all?q=Lac%20du%20Flambeau%20town,%20Wisconsin>

¹⁶ United States Census Bureau, <https://data.census.gov/all?q=Lac%20du%20Flambeau%20CDP,%20Wisconsin>.

¹⁷ The Town is organized under the provision of the Wisconsin State Statutes, with an elected Town Board consisting of a Town Chairman and two Town Supervisors, an appointed Town Clerk, and elected Town Treasurer. The LDF Tribe operates under Federal recognition as a sovereign Indian nation. Tribal government oversees issues related to Tribal members and Tribal land. The Town and Tribal governments work together on issues affecting the entire community. *See* Town of Lac du Flambeau, searchable at <https://www.tn.lacduflambeau.wi.gov/> (Last visited 12/13/2023).

Lac du Flambeau, as a CDP, is a community for allotment purposes.¹⁸

4. We conclude that Petitioner's proposal satisfies the requirements for a Tribal Allotment and the public interest will be served by the allotment of Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment. The facts presented by Petitioner demonstrate that allotting Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment will serve the public interest by providing vital radio service to Lac du Flambeau and to surrounding LDF Tribal Lands and by enabling the Petitioner to set its own communications priorities and goals with respect to this new service. The allotment will also further the public interest by providing a first local Tribal-owned transmission service at Lac du Flambeau, Wisconsin. The staff engineering analysis indicates that Channel 225A can be allotted to Lac du Flambeau, Wisconsin, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 12.1 km (7.5 miles) northwest of the community. The reference coordinates are 46-01-14 NL and 89-44-54 WL.¹⁹

5. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁰ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.202(b) of the Rules.²¹ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.²² 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 2002.²³

IV. ORDERING CLAUSES

6. IT IS 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 February 2, 2024, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Lac Du Flambeau, Wisconsin	225A ²⁴

7. The window period for filing applications for Channel 225A at Lac Du Flambeau, Wisconsin will not be opened at this time. Instead, the Commission will release in the near future a

¹⁸ The community has Lac Du Flambeau Town Hall, Lac du Flambeau Public School, Lac du Flambeau Chamber of Commerce, Lac Du Flambeau Public Library, Lac du Flambeau Fire and Ambulance Department, and U.S. Post Office with its own zip code (54538). Additionally, Lac Du Flambeau has local businesses and organizations such as Lake of the Torches Resort Casino, Dillman's Bay Resort, Brew Bear Coffee Shop, George W. Brown, Jr. Ojibwe Museum & Cultural Center, Lac Courte Oreilles Ojibwa Community College, as well as those bearing the name of community, *i.e.*, Lac du Flambeau Campground & Marina, Lac du Flambeau Tribal Resources, Lac du Flambeau Community Education Classes, and Community Presbyterian Church of Lac Du Flambeau.

¹⁹ Lac du Flambeau, Wisconsin is located within 320 kilometers (199 miles) of the U.S.-Canada border. Commission staff has requested Canadian concurrence. The concurrence of the Canadian Government has been received.

²⁰ 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).

²¹ 47 CFR § 73.202(b).

²² 44 U.S.C. §§ 3501-3520.

²³ 44 U.S.C. § 3506(c)(4).

²⁴ This channel is reserved as a Tribal Allotment.

public notice announcing a Threshold Qualifications Window. Any qualifying applicant may file an FCC Form 301 for this channel during the window.²⁵

8. 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).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. 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

²⁵ *Third R&O*, 26 FCC Rcd at 17645-46; *Second R&O*, 26 FCC Rcd at 2588-90. Should no applicant meeting threshold qualifications file an FCC Form 301 during the Threshold Qualifications Window (and should the proponent request that its already-filed Form 301 application not be immediately processed), the Tribal Allotment will be included in the inventory for a broadcast auction at a later date. In that event, only threshold qualified applicants, including the original proponent, would be permitted to participate in the auction. *Third R&O*, 26 FCC Rcd at 17649.