

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

In the Matter of )  
 )  
Amendment of section 73.202(b), Table of ) MB Docket No. 23-209  
Allotments, FM Broadcast Stations (Lihue, ) RM-11951  
Hawaii) )

NOTICE OF PROPOSED RULEMAKING

Adopted: July 6, 2023

Released: July 7, 2023

Comment Date: August 28, 2023

Reply Comment Date: September 12, 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 SSR Communications, Inc. (Petitioner), requesting the allotment of Channel 292A at Lihue, Hawaii, as the community’s sixth local service. In compliance with the Commission’s procedures,<sup>1</sup> Petitioner concurrently filed a construction permit application and paid the necessary filing fee.<sup>2</sup>

II. BACKGROUND

2. Petitioner states that Lihue, Hawaii would receive its third competing FM commercial radio service.<sup>3</sup> It claims that Lihue is a census designated place (CDP) with a 2020 U.S. Census population of 6,455 persons.<sup>4</sup> Petitioner argues that the Commission has found previously that Lihue is a bona-fide community for FM allotment purposes.<sup>5</sup> Petitioner commits that, if Channel 292A at Lihue, Hawaii is allotted, it will participate in the FM auction process, and if it is the successful bidder, it will promptly construct and operate the proposed station in accordance with the Commission’s rules and procedures.

III. DISCUSSION

3. We believe that the Petitioner’s proposed change in the FM Table of Allotments warrants consideration under Priority (4), because it would provide a sixth local and a fourth FM commercial

<sup>1</sup> 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).

<sup>2</sup> See FCC File No. 0000214886 (filed May 17, 2023) (Application).

<sup>3</sup> Petition at 1.

<sup>4</sup> US Census data states that Lihue, Hawaii is a CDP that has a 2020 U.S. Census population of 8,004 persons. See <https://data.census.gov/all?q=lihue,+hawaii>

<sup>5</sup> Lihue, Hawaii already has five local services licensed to the community that includes noncommercial educational FM Stations KHJC and KIPL, and commercial FM Stations KQNG-FM, KFMN, and KJMQ.

service at Lihue, Hawaii.<sup>6</sup> A staff engineering analysis indicates that Channel 292A can be allotted to Lihue, Hawaii, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 2.5 km (1.6 miles) north of the community.<sup>7</sup> The reference coordinates are 22-00-00 NL and 159-21-00 WL. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,<sup>8</sup> as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lihue, Hawaii	-----	292A

#### IV. PROCEDURAL MATTERS

4. *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.<sup>9</sup>

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.<sup>10</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>11</sup>

6. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,<sup>12</sup> 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).<sup>13</sup>

- **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

<sup>6</sup> 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).

<sup>7</sup> 47 CFR § 73.207.

<sup>8</sup> 47 CFR § 73.202(b).

<sup>9</sup> 47 CFR § 1.420(d).

<sup>10</sup> 47 CFR § 1.420(j).

<sup>11</sup> 47 CFR § 1.420(g)(2).

<sup>12</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>13</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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.<sup>14</sup>

7. *Service.* Pursuant section 1.420 of the Rules,<sup>15</sup> 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.<sup>16</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Matthew K. Wesolowski, CEO  
SSR Communications, Inc.  
740 Highway 49 North, Suite R  
Flora, MS 39071  
[matt@wyab.com](mailto:matt@wyab.com)

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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> Any comment that has not been served on the petitioner constitutes an *ex parte*

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<sup>14</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>15</sup> 47 CFR § 1.420.

<sup>16</sup> See 47 CFR § 1.420(a), (b) and (c).

<sup>17</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>18</sup> 47 CFR § 1.1208.

<sup>19</sup> 47 CFR § 1.1204(a)(10).

<sup>20</sup> 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing (continued....)

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.

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,<sup>21</sup> do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.<sup>22</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>23</sup> 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.<sup>24</sup>

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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

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](mailto:Rolanda-Faye.Smith@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez  
Assistant Chief, Audio Division  
Media Bureau

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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).

<sup>21</sup> 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).

<sup>22</sup> 47 CFR § 73.202(b).

<sup>23</sup> See 44 U.S.C. §§ 3501-3520.

<sup>24</sup> See 44 U.S.C. § 3506(c)(4).