

**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)	)	
	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: September 6, 2023**

**Released: September 6, 2023**

**Comment Date: October 30, 2023**

**Reply Comment Date: November 15, 2023**

By the Assistant Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Audio Division has before it the Petition for Rulemaking (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), and an associated FCC Form 301 application.<sup>1</sup> Petitioner proposes to amend the FM Table of Allotments, section 73.202(b) of the Commission’s rules,<sup>2</sup> by allotting Channel 225A at Lac du Flambeau, Wisconsin, as a first local service. Petitioner seeks a Tribal Priority for the proposed allotment. In this Notice of Proposed Rule Making, we seek comment on that proposal.

**II. BACKGROUND**

2. In *Rural Radio*,<sup>3</sup> the Commission concluded that it would serve the public interest to establish a section 307(b) priority in favor of Tribal Entities proposing the allotment of FM radio channels to serve Tribal lands.<sup>4</sup> The rationale for this determination was that “the establishment of an allocation priority for the provision of radio service to tribal lands by Indian tribal government-owned stations will advance our Section 307(b) goals and serve the public interest by enabling Indian tribal governments to

<sup>1</sup> See Application File No. 0000219341.

<sup>2</sup> 47 CFR § 73.202(b).

<sup>3</sup> See *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”); and Third Report and Order, 26 FCC Rcd 17642 (2011) (“Third R&O”) (collectively, “*Rural Radio*”).

<sup>4</sup> *Rural Radio*, First R&O, 25 FCC Rcd at 1596-97. See also NPRM, 24 FCC Rcd at 5248, n.29 (defining “Indian Tribe[s]” and “Federally-Recognized Indian Tribes”), and n.30 (defining “tribal lands”).

provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.”<sup>5</sup>

3. The Commission instituted several requirements for a Tribal Allotment. Those requirements pertain to the identity of the applicant, the land and population covered by the principal community contour, the location of the proposed community, and the availability of radio services, especially Tribally-owned or Tribal Entity owned radio services, at the proposed community.<sup>6</sup> Upon award of a Tribal Allotment, within a reasonable period of time the Commission will release a public notice announcing a Threshold Qualifications Window, during which any qualifying applicant will be afforded the opportunity to file FCC Form 2100, Schedule 301-FM for the channel allotted as a Tribal Allotment.<sup>7</sup>

4. Petitioner certifies that its proposal meets the requirements established in *Rural Radio* for a Tribal Priority.<sup>8</sup> Petitioner states that it is a wholly-owned entity of the LDF Tribe, a federally recognized Native American Tribe, proposing Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment.<sup>9</sup> Petitioner contends that Lac du Flambeau is a community for allotment purposes. Lac du Flambeau is a census-designated place (CDP) in Vilas County, Wisconsin with a 2020 U.S. census population of 1,845 persons. Petitioner states further that the proposed new station will be the first local tribally-owned commercial full power service at Lac du Flambeau since no full power broadcast stations are licensed to the community. Petitioner contends that the new FM station will serve 98.9% of the tribal population and 96.3% of the reservation area within the 70 dBu contour.

### III. DISCUSSION

5. The facts presented by Petitioner are sufficient to support consideration of the allotment of FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment. The proposed Tribal

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<sup>5</sup> *Rural Radio*, Third R&O, 26 FCC Rcd at 1588.

<sup>6</sup> In order to satisfy the prerequisites for a Tribal Allotment, the following requirements 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.” *Rural Radio*, Third R&O, 26 FCC Rcd at 17646-47. See also First R&O, 25 FCC Rcd at 1596-97; and Second R&O, 26 FCC Rcd at 2585-87.

<sup>7</sup> See Third R&O, 26 FCC Rcd at 17645-46. See also Second R&O, 26 FCC Rcd at 2588-90. Should no applicant meeting threshold qualifications file FCC Form 2100, Schedule 301-FM during the Threshold Qualifications Window (and should the proponent request that its already-filed Form 2100, Schedule 301-FM 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, may specify the Tribal Allotment in their applications to participate in the auction (FCC Form 175). Third R&O, 26 FCC Rcd at 17649.

<sup>8</sup> Specifically, Petitioner provides evidence that: at least 50 percent of the proposed principal community contour consists of LDF Tribal lands; Lac du Flambeau, Wisconsin, the proposed community of license, is located on LDF Tribal lands; and the proposed facility will be the first local Tribally-owned commercial transmission service at the proposed community of license. Petitioner further states that it is eligible for a Tribal Priority at Lac du Flambeau, because it is a fully-chartered organization owned and controlled by the LDF Tribe, and its main campus lies within the principal community border of the proposed facility. The members of the tribal council serve as the directors of the corporation.

<sup>9</sup> Petition at 1.

Allotment of FM Channel 225A could serve the public interest by providing vital radio service to Lac du Flambeau and surrounding LDF Tribal lands, and by enabling the Petitioner, an Entity of the LDF Tribe, to set its own communications priorities and goals with respect to such service. Moreover, the allotment could further the public interest by providing a first local service at Lac du Flambeau.

6. Finally, the proposed change in the FM Table of Allotments complies with the technical requirements of the Commission’s rules. A 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.<sup>10</sup> The staff engineering analysis confirms that the Tribal Reservation would cover 3,518 persons, of whom 3,480 persons (98.9%) reside on the Lac du Flambeau Reservation.

7. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. section 73.202(b), by the allocation of FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment, as set forth below:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lac du Flambeau, Wisconsin	-----	225A <sup>11</sup>

**IV. PROCEDURAL MATTERS**

8. *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>12</sup>

9. *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>13</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>14</sup>

10. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,<sup>15</sup> interested parties may file comments and reply comments on or before the dates indicated on the

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<sup>10</sup> 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 must be received before the channel can be allocated.

<sup>11</sup> We are proposing the reservation of this channel as a Tribal Allotment.

<sup>12</sup> 47 CFR § 1.420(j).

<sup>13</sup> 47 CFR § 1.420(d).

<sup>14</sup> 47 CFR § 1.420(g)(2).

<sup>15</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>16</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 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.
  - o 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.
  - o U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
  - o 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>17</sup>

11. *Service.* Pursuant section 1.420 of the Rules,<sup>18</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>19</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

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

<sup>17</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>18</sup> 47 CFR § 1.420.

<sup>19</sup> 47 CFR §1.420(a), (b) and (c).

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12. *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>20</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>21</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>22</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>23</sup> 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.

13. *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.

14. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>24</sup> do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.<sup>25</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>26</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>27</sup>

15. *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 (voice).

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<sup>20</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>21</sup> 47 CFR § 1.1208.

<sup>22</sup> 47 CFR § 1.1204(a)(10).

<sup>23</sup> 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).

<sup>24</sup> 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>25</sup> 47 CFR § 73.202(b).

<sup>26</sup> 44 U.S.C. §§ 3501-3520.

<sup>27</sup> 44 U.S.C. § 3506(c)(4).

16. *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

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