

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

In the Matter of)
)
Amendment of section 73.202(b), Table of) MB Docket No. 22-430
Allotments, FM Broadcast Stations (Wharton,) RM-11939
Texas))
)

REPORT AND ORDER

Adopted: October 19, 2023

Released: October 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, issued in response to the Petition for Rule Making filed by 7430 Technologies LLC (Petitioner). Petitioner filed 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, by allotting Channel 277C2 at Wharton, Texas.

II. BACKGROUND

2. The Notice proposed the allotment of Channel 277C2 at Wharton, Texas, as the community's second local service. Wharton, Texas is listed in the 2020 U.S. Census with a population of 8,627 persons. As stated in the Notice, Wharton, Texas is an incorporated city, founded in 1846, located in Wharton County, Texas serving as the county seat that has its own zip code (77488), elected mayor and city council, city police force, and volunteer fire department.

3. Petitioner filed comments reiterating its expression of interest in Channel 277C2 at Wharton, Texas. Petitioner states that it has submitted a construction permit application and paid the necessary filing fee when it concurrently filed the Petition for Rulemaking in compliance with the FCC's procedures for new FM allotment proposals. Petitioner reaffirms its intention to apply for the channel, if 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 in the event the Commission grants its application.

III. DISCUSSION

4. We find that the public interest would be served by allotting a second local service at

1 See Wharton, Texas, Notice of Proposed Rule Making, DA-22-1334, rel. December 15, 2022 (MB 2022), 2022 WL 18023210 ("Notice"); see also 88 FR 14107 (published March 7, 2003).

2 47 C.F.R. § 73.202(b).

3 KANI(AM) is licensed at Wharton, Texas.

4 See Notice, para. 2.

5 Petitioner Comments at 1.

6 See FCC File No. 0000204328.

7 Petitioner Comments at 2.

Wharton, Texas, under Priority (4).⁸ A staff engineering analysis indicates that Channel 277C2 can be allotted to Wharton, Texas, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 2.1 km (1.3 miles) west of the community.⁹ The reference coordinates are 29-18-26 NL and 96-07-50 WL.

5. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,¹⁰ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.¹¹ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.¹² 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 2002.¹³

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 December 4, 2023, 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>
Wharton, Texas	277C2

7. The window period for filing applications for Channel 277C2 at Wharton, Texas 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.

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.

⁸ *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).

⁹ 47 CFR § 73.207.

¹⁰ 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).

¹¹ 47 CFR § 73.202(b).

¹² 44 U.S.C. §§ 3501-3520.

¹³ 44 U.S.C. § 3506(c)(4).

10. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

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