

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

In the Matter of)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-171
Table of Allotments,)	RM-8846
FM Broadcast Stations.)	
(Indian Springs, Nevada, Mountain Pass,)	
California, Kingman, Arizona, and St. George,)	
Utah))	

NOTICE OF PROPOSED RULE MAKING
AND
ORDERS TO SHOW CAUSE

Adopted: August 9, 1996

Released: August 16, 1996

Comment Date: October 7, 1996

Reply Comment Date: October 22, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Claire B. Benezra ("petitioner"), permittee of Station KPXC, Indian Springs, Nevada, requesting the substitution of Channel 257C for Channel 257A at Indian Springs, and the modification of Station KPXC's construction permit to specify operation on the higher class channel. To accommodate the allotment of Channel 257C at Indian Springs, petitioner also requests the substitution of Channel 259B for Channel 258B at Mountain Pass, California, the substitution of Channel 261C2 for Channel 260C2 at Kingman, Arizona, and the substitution of Channel 260C for Channel 259C at St. George, Utah. Petitioner states that she will apply for the channel, if allotted.

2. In support of her proposal, petitioner states that upgrading Station KPXC to a Class C will enable it to provide service to 19,705 persons, a seven and one-half time increase in the population it presently services. In addition, petitioner states that Station KPXC would provide a first aural reception service to 1,549 persons who are permanent residents within an 8,647 square kilometer area, based on population figures from the 1990 U.S. Census. Further, petitioner claims that if the persons who work at or visit the Nellis Air Force Range, the Nevada Test Site, the Desert National Wildlife Range and the Death Valley National Monument are considered, an additional substantial number of persons would also receive a first aural reception service. Finally, petitioner estimates that each week approximately 26,277 persons travel on the 58 kilometer portion of U.S. Route 95 that lies within the "white area" which Station KPXC seeks to serve.

3. In order to allot Channel 257C to Indian Springs, petitioner proposes that the license of Station KHYZ, Mountain Pass, California, be modified to specify Channel 259B in lieu of its present Channel 258B, the license of Station KGMN, Kingman, Arizona, be modified to specify Channel 261C2 instead of its present Channel 260C2, and that the license of Station KSGI-FM, St. George, Utah, be modified by substituting Channel 260C for its present Channel 259C. Petitioner claims that her proposal, although requiring three operating stations to change channel, complies with the Commission policy set forth in Columbus, Nebraska, 59 RR 2d 1184 (1986), regarding rule makings which require more than two stations to change channel.¹ Not only has she obtained the consent of the Ear Corporation, licensee of Station KSGI, St. George, as shown in the letter appended to the petition, but her proposal also provides significant public interest benefits by the provision of a first aural reception service to at least 1,549 persons.

4. Commission policy requires that the party benefitting from the channel change reimburse the affected stations. In this case, Stations KHYZ, KGMN and KSGI-FM are entitled to reimbursement for the reasonable costs incurred in changing the frequencies. See Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner states her willingness to reimburse these stations and points out that an agreement on reimbursement has already been reached with Station KSGI. An Order to Show Cause is being issued to KHWY (California), L.P., licensee of Station KHYZ, and New West Broadcasting Systems, Inc., licensee of Station KGMN. An Order to Show Cause is not being issued to the Ear Corporation, licensee of Station KSGI, since it has already agreed to the change in channel.

5. As requested, we also propose to modify the license of KPXC to specify operation on Channel 257C. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Indian Springs or require that the petitioner provide an equivalent channel for use by other interested parties.

Technical Summary

6. Channel 257C can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 miles (21.2 kilometers) southwest to accommodate petitioner's desired transmitter site. Channel 261C2 can be allotted to Kingman, Arizona, at Station KGMN's licensed transmitter site. Channel 260C can be allotted to St. George, Utah, at Station KSGI's licensed transmitter site. Channel 259B can be allotted

¹ In Columbus, Nebraska, *supra*, the Commission stated that petitions for rule making which required more than two operating stations to change channel would not be accepted in the absence of special factors involving significant public interest benefits, or an agreement among the affected stations to the proposal in advance of the filing of the petition. See also, Castle Rock, Colorado, 8 FCC Rcd 4475 (1993), which holds that a request involving more than two channel substitutions would be considered if consent to the change were obtained from all but two of the affected stations.

to Mountain Pass, California, at Station KHYZ's licensed transmitter site.² Concurrence by the Mexican Government in the proposed allotments at Kingman and Mountain Pass is required since both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

7. We believe petitioner's proposal warrants consideration since the substitution of Channel 257C for Channel 257A will provide Indian Springs with a wide-coverage area FM service and enable Station KPXC to expand its service area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Kingman, Arizona	234C, 260C2, 290C1	234C, 261C2, 290C1
Mountain Pass, California	258B	259B
Indian Springs, Nevada	257A	257C
St. George, Utah	228A, 240C, 259C	228A, 240C, 260C

8. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, KHWY (California), L.P., licensee of Station KHYZ, Mountain Pass, CA, and New West Broadcasting Systems, Inc., licensee of Station KGMN, Kingman, AZ, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channels 259B and 261C2, respectively, as proposed herein instead of their present Channels 258B and 260C2, respectively.

9. Pursuant to Section 1.87 of the Commission's Rules, KHWY (California), L.P. and New West Broadcasting Systems, Inc. may, not later than October 7, 1996, file a written statement showing with particularity why their licenses should not be modified as proposed in the Order to Show Cause. The Commission may call on KHWY (California), L.P. and/or New West Broadcasting Systems, Inc. to furnish additional information. If KHWY (California), L.P. and/or New West Broadcasting Systems, Inc. raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, KHWY (California), L.P. and/or New West Broadcasting Systems, Inc., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

² The coordinates for Channel 257C at Indian Springs, NV, are 36-25-18 NL; 115-48-35 WL. The coordinates for Channel 261C2 at Kingman, AZ, are 35-06-37; 113-52-55. The coordinates for Channel 260C at St. George, UT, are 36-50-49; 113-29-28. The coordinates for Channel 259B at Mountain Pass are 35-29-27; 115-33-27.

10. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensees, as follows: KHWY (California) L.P., Station KHYZ, P.O. Box 25606, Los Angeles, CA 90025; New West Broadcasting Systems, Inc., Station KGMN, 812 East Beale Street, Kingman, AZ 86401.

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before October 7, 1996, and reply comments on or before October 22, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jerrold Miller
Miller & Miller
P.O. Box 33003
Washington, D.C. 20033
(Counsel to petitioner)

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. 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. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which 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.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also 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.

3. Cut-off protection. The following procedures will govern the consideration of 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. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. 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. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission,

Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.