

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 96-232
Table of Allotments,)	RM-8868
FM Broadcast Stations.)	
(Pueblo and Pueblo West, Colorado))	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 8, 1996

Released: November 15, 1996

Comment Date: January 6, 1997

Reply Comment Date: January 21, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Pueblo Broadcasters, Inc. ("petitioner"), licensee of Station KYZX(FM), Channel 283C2, Pueblo, Colorado, seeking the reallocation of Channel 283C2 from Pueblo to Pueblo West, Colorado and modification of its authorization accordingly. Petitioner stated its intention to apply for Channel 283C2 if it is reallocated to Pueblo West, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a higher class of channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that the requested reallocation to Pueblo West, a census designated place located outside of the Pueblo Urbanized Area, is mutually exclusive with its existing authorization at Pueblo. The distance between Pueblo West¹ and the petitioner's specified site at Pueblo is approximately 10 kilometers (6.2 miles), whereas a distance of 190 kilometers (118 miles) is required in this instance.² Further, petitioner advises that from the site specified in the construction permit for Station KYZX(FM) at Pueblo, city grade coverage levels will be provided to Pueblo West, as set forth in Section 73.315 of the Commission's Rules.

¹According to the Census Bureau, reference coordinates identifying the community of Pueblo West are 38-19-12 and 104-44-36.

²Coordinates at the licensed site of Station KYZX(FM) are 38-21-28 and 104-38-12; those at the site specified in its outstanding construction permit site at Pueblo are 38-33-24 and 104-35-56.

3. In support of its proposal, petitioner advises that Pueblo West has its own municipal government, a fire department, county sheriff's department, public works department, as well as water and sanitation treatment plants. Further, petitioner reports that Pueblo West contains civic organizations, churches, two local newspapers, shopping centers, and emergency medical services.

4. Petitioner states that adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),³ as the reallocation would provide Pueblo West (population 4,300)⁴ with its first local aural transmission service, whereas Pueblo (population 101,600) will continue to receive local service from 6 AM stations, 6 FM stations, and one noncommercial FM station.⁵

5. In view of the above, we believe the petitioner's proposal warrants consideration. The proposal would not deprive Pueblo of its only local transmission service, and its proposed use is mutually exclusive with Pueblo West. Therefore, as petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will propose to modify the construction permit for Station KYZX(FM)⁶ without entertaining competing expressions of interest in the use of Channel 283C2 at Pueblo West, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Channel 283C2 can be allotted to Pueblo West in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing the petitioner's currently authorized construction permit site located 22.2 kilometers (13.8 miles) north of the community at coordinates 38-33-24 and 104-35-56.

7. In light of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

³The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

⁴Population figures were taken from the 1990 U.S. Census. However, petitioner advises that Pueblo West has been the most rapidly growing community in Southern Colorado, having nearly doubled in size during the past six years to its present population in excess of 8,000 residents.

⁵According to petitioner AM Stations KCSJ, KRMX, KFEL, KKPL, KGHF, and KRRU are licensed to Pueblo, as are FM Stations KCFP, Channel 220A, KCCY, Channel 245C, KKMG, Channel 255C, KVUU, Channel 260C, KGFT, Channel 264C, KNKN, Channel 296C2 and KDZA-FM, Channel 300C1.

⁶Modification of the petitioner's construction permit authorization is proposed rather than its license authorization. Petitioner's technical engineering statement advises that the licensed site of Station KYZX(FM) does not comply with the requirements of Section 73.207(b) of the Commission's Rules for allotment purposes with respect to Station KSTY(FM), Channel 280A, Canon City, Colorado. As a result, Station KYZX(FM) currently operates Channel 283C2 at its licensed site pursuant to the provisions of Section 73.215 of the Commission's Rules.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Pueblo, Colorado	245C, 255C, 260C, 264C, 283C2, 296C2, 300C1	245C, 255C, 260C, 264C, 296C2, 300C1
Pueblo West, Colorado	--	283C2

8. 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.

9. Interested parties may file comments on or before January 6, 1997, and reply comments on or before January 21, 1997, 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's counsel, as follows:

John M. Pelkey, Esq.
Rafael G. Prohias, Esq.
Haley, Bader and Potts, P.L.C.
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4350 North Fairfax Drive
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10. 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) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, 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

APPENDIXMM Docket No. 96-232
RM-8868

1. Pursuant to authority contained 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 Procedures. 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 proposal(s) 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.