

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

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|---------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. 97-232 |
| Table of Allotments, |) | RM-9191 |
| FM Broadcast Stations. |) | |
| (Eureka, Montana) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: November 5, 1997

Released: November 14, 1997

Comment Date: January 5, 1998

Reply Date: January 20, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by William G. Brady d/b/a KHJ Radio ("Brady"), requesting the allotment of Channel 228C3 at Eureka, Montana, as that community's first local FM broadcast service. Brady stated his intention to file an application for Channel 228C3 at Eureka.

2. In support of his request, Brady states that the allotment of Channel 228C3 at Eureka will provide a much needed local broadcast service to the community. Brady points out that the closest FM allotment to Eureka is located in Whitefish, Montana, which is 52 miles from Eureka. According to Brady, allotment of an FM channel at Eureka would provide the community and surrounding area with information during emergency conditions caused by severe weather as well as an outlet for local expression. Brady states that Eureka has the recognizable community factors such as schools, churches, a local newspaper, a shopping center and social and civic organizations. Further, Eureka is incorporated, has its own post office and zip code and the 1990 Census credits the community with a population of 1,043 people. Therefore, Brady believes that Eureka has the necessary criteria to demonstrate that it is a community for allotment purposes.

3. A staff review of the proposal reveals that Channel 228C3 can be allotted to Eureka, Montana, consistent with the minimum distance separation requirements of the Commission's Rules without a site restriction.¹ Although it is not necessary to site restrict the allotment, our analysis indicates that Channel 228C3 at Eureka is short spaced to vacant Channel 226C,

¹ The coordinates for Channel 228C3 at Eureka, Montana, are 48-52-54 and 115-02-54.

Cranbrook, British Columbia, Canada. Therefore, we will request concurrence from the Canadian government for the allotment of Channel 228C3 at Eureka as a specially negotiated short-spaced allotment.

4. We believe the public interest would be served by proposing the allotment of Channel 228C3 at Eureka, Montana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Eureka, as follows:

| Community | Channel No. | |
|-----------------|-------------|----------|
| | Present | Proposed |
| Eureka, Montana | ----- | 228C3 |

5. 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.

6. Interested parties may file comments on or before **January 5, 1998**, and reply comments on or before **January 20, 1998**, 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 petitioner, as follows:

William G. Brady
d/b/a KHJ Radio
746 Shadow lane
Kalispell, Montana 59901

7. 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.

8. For further information concerning this proceeding contact Kathleen Scheuerle, 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 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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

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 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 Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.