

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

In the Matter of
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Newcastle and Pine Haven, Wyoming)
MB Docket No. 03-258
RM-10833

NOTICE OF PROPOSED RULEMAKING

Adopted: December 18, 2003

Released: December 23, 2003

Comment Date: February 17, 2004
Reply Comment Date: March 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Rule Making filed by Michael Radio Group ("Petitioner"), licensee of Station KRKI(FM), Channel 258A, Newcastle, Wyoming. Petitioner seeks the substitution of Channel 258C0 for Channel 258A at Newcastle, Wyoming and the modification of its license for Station KRKI(FM) accordingly. To accommodate this substitution, Petitioner requests the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming. Petitioner has stated its intention to file an application to implement this substitution at Newcastle, Wyoming, if its proposal is granted.

2. This proposal warrants consideration since the proposed substitution at Newcastle could provide expanded service to approximately 148,839 persons. A staff engineering analysis indicates that Channel 258C0 can be allotted to Newcastle, Wyoming, consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 36.5 kilometers (22.7 miles) east of the community. To accommodate Channel 258C0 at Newcastle we shall also propose the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming. It has been determined that Channel 260A can be allotted to Pine Haven, consistent with the minimum distance separation requirement of the Commission's Rules at city reference coordinates. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 258C0 at

1 Petitioner original filed a petition for rulemaking requesting only the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming in order to accommodate a minor modification application it filed, which proposed the upgrade of Station KRKI(FM) to specify operation on Channel 258C0 in lieu of Channel 258A at Newcastle, Wyoming (BPH-20030919AAU). Petitioner filed an amendment to its rule making proposal that requested the incorporation of this minor modification application. See 47 C.F.R. § 73.3573(a)(1).

2 The reference coordinates for Channel 258C0 at Newcastle are 43-52-10 North Latitude and 103-45-04 West Longitude.

3 The reference coordinates for Channel 260A at Pine Haven are 44-21-28 North Latitude and 104-48-36 West Longitude.

Newcastle, Wyoming or require Petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Newcastle, Wyoming	258A ⁴	258C0
Pine Haven, Wyoming	259A	260A

4. 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 in paragraph 2 of the Appendix before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before February 17, 2004, and reply comments on or before March 3, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Michael Radio Group
 c/o A. Wray Fitch III
 Gammon and Grange, P.C.
 8280 Greensboro Drive, 7th Floor
 McLean, Virginia 22101-3807

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁴ The FM Table of Allotments has not been amended to reflect the grant of a license application for Station KRKI(FM) to specify operation on Channel 258A in lieu of Channel 257A at Newcastle, Wyoming (BLH-20030117AAS). This action constitutes an editorial change in the FM Table of Allotments. Moreover, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b)(A) and (B).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

8. For further information concerning this proceeding, contact Rolanda F. Smith, 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket 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
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁵ See Certification that Section 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).

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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.