

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.
(Ft. Collins, Westcliffe and
Wheat Ridge, Colorado)
MB Docket No. 03-57
RM-10565

NOTICE OF PROPOSED RULE MAKING

Adopted: March 12, 2003

Released: March 14, 2003

Comment Date: May 5, 2003

Reply Comment Date: May 20, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Tsunami Communications, Inc. ("TCI"), licensee of Station KTCL, Channel 227C, Ft. Collins, Colorado. TCI requests the substitution of Channel 227C0 for Channel 227C at Ft. Collins, Colorado, reallocation of Channel 227C0 to Wheat Ridge, Colorado, and modification of the license for Station KTCL to specify Wheat Ridge as its community of license. TCI also requests the substitution of Channel 249A for vacant Channel 227A at Westcliffe, Colorado. TCI states that if the Commission grants its request, TCI will file an application for Channel 227C0 at Wheat Ridge.

2. TCI 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 new community of license without affording other interested parties an opportunity to file competing expressions of interest. In support of its proposal, TCI states that the proposed use of Channel 227C0 at Wheat Ridge is mutually exclusive with Station KTCL's existing authorization at Ft. Collins. TCI further states that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the FM Allotment Priorities, by providing Wheat Ridge, Colorado, (population of 32,913), with its first local aural transmission service. The allotment of Channel 227C0 to Wheat Ridge would not deprive Ft. Collins (population of 118,652) of its sole local transmission outlet, because Ft. Collins would retain local service from Stations KPAW, KCSU, and KIIIX(AM). TCI provided information showing community status for Wheat Ridge, explaining that Ft. Collins is the central city in the Ft. Collins Urbanized Area while Wheat Ridge is located in the Denver Urbanized Area. Thus, Station KTCL is not relocating from a rural to an urban area as the station is already

1 See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

2 See Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities"), 90 FCC 2d 88 (1982). The 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)].

3 Population figures reported herein were taken from the 2000 U.S. Census.

located in an urban area. TCI states that KTCL's current 70 dBu contour already covers 100% of the Ft. Collins and Bolder Urbanized Areas and more than 50% of the Denver Urbanized Area. Nevertheless, TCI is providing a showing that Wheat Ridge is independent of Denver under the factors set forth in *Faye and Richard Tuck*.⁴ TCI states that there are currently 2,798,869 people within the KTCL 60 dBu contour. There will be 2,644,106 people within the 60 dBu contour of Station KTCL, Channel 227C0, at Wheat Ridge and that 2,481,749 people currently residing within the KTCL 60 dBu contour will continue to be served by the station. TCI states that, using the Flat Earth Model generally accepted by the Commission, 317,120 people will lose service while 162,357 people will gain new service within the proposed KTCL contour. TCI further states that due to the severe mountainous terrain around both the present and proposed transmitting sites, a second analysis was performed using the Longley-Rice method, which shows 21,166 people will lose service while 67,146 people will gain a new service for a net gain of 43,980 people.

3. Since TCI's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KTCL without entertaining competing expressions of interest in the use of Channel 227C0 at Wheat Ridge, Colorado. Channel 227C0 can be allotted to Wheat Ridge, Colorado, consistent with the technical requirements of the Commission's Rules at TCI's specified site, utilizing coordinates 39-40-18 and 105-07-32. This site is 11.3 kilometers (7.0 miles) south of the community. To accommodate the allotment at Wheat Ridge we shall also propose the substitution of Channel 249A for vacant Channel 227A at Westcliffe, Colorado, at coordinates 38-03-21 and 105-30-02. There is a site restriction 9.3 kilometers (5.8 miles) south of Westcliffe.

⁴ 3 FCC Rcd 5374 (1988). (1) *Extent to which the residents of Wheat Ridge, Colorado, work in the City of Wheat Ridge.* According to the 2000 U.S. Census, 21% of the residents of Wheat Ridge work in their place of residence. There are more than 3,200 businesses licensed to the City of Wheat Ridge of which about one-half are locally owned and operated. The larger businesses include Exempla Medical Center, Jolly Rancher Candies, Rocky Mountain Bottling, Volant Skis & Aggression Snowboards and Star Guide Corporation. (2) *Newspapers and other media that cover Wheat Ridge's needs and interests.* The *Wheat Ridge Transcript* is published weekly. The City of Wheat Ridge maintains its own webpage providing residents with information concerning the local government. (3) *Community leaders and residents perceive Wheat Ridge as separate from Denver.* Wheat Ridge has its own identity, founded in 1859 and incorporated in 1969. (4) *Wheat Ridge has its own local government and elected officials.* Wheat Ridge has a mayor, city clerk and city treasurer elected every four years. There are eight City Council members along with a fire department and police department. Among the municipal services provided by the City are business licenses, planning, zoning, road and bridge maintenance, snow removal, economic development and housing authority. (5) *The City of Wheat Ridge has its own zip code and separate governmental listings in the local telephone company.* The U.S. Postal Service operates the Wheat Ridge main Post Office in Wheat Ridge and has designated seven zip codes for the community. The Denver Metropolitan Telephone Directory published by Quest contains a separate section for the Wheat Ridge government listings and two smaller directories published by Quest contain additional Wheat Ridge listings. (6) *The City of Wheat Ridge has its own commercial establishments and health facilities.* Numerous businesses identify with the community by using "Wheat Ridge" in their name, for example: Wheat Ridge Lanes, First Bank of Wheat Ridge, Wheat Ridge Auto Services, Wheat Ridge Realtors and Wheat Ridge Optical. Medical services are provided by the Wheat Ridge Internal Medicine, Exempla Wheat Ridge Medical Center and the Lutheran Medical Center. The community also has numerous dentists and a veterinary hospital. Wheat Ridge has more than two dozen religious organizations and civic organizations. (7) *Wheat Ridge is a separate and distinct advertising market from Denver.* According to City Government staff and the newspaper serving Wheat Ridge, businesses in Wheat Ridge advertise in *Wheat Ridge Transcript* which enable them to reach the local residents. (8) *The City of Wheat Ridge has its own library and its police and fire protection are provided independent of any other jurisdiction.* The Jefferson County Public Library System operates the Wheat Ridge Public Library, which houses the Wheat Ridge Historical Society. The Jefferson County Public School system maintains six elementary schools, two public middle schools, and a high school in Wheat Ridge. There are also several private schools in Wheat Ridge.

4. Accordingly, 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:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Fort Collins, Colorado	227C, 300C1	300C1
Wheat Ridge, Colorado	-----	227C0
Westcliffe, Colorado	227A	249A

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. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **May 5, 2003**, and reply comments on or before **May 20, 2003**, 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 Radio Beam's counsel, as follows:

Mark N. Lipp
 Shook, Hardy & Bacon
 600 14th Street, N.W, Suite 800
 Washington, D. C. 20005-2004

7. 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, Vistrionix, 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.

8. 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.⁵

9. For further information concerning this proceeding, contact Kathleen Scheuerle, 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 that 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 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.

APPENDIX

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 discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent 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 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 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 Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.