

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. |) | |
| (Liberty, Pennsylvania) |) | MB Docket No. 04-127 |
| |) | RM-10941 |
| |) | |
| (Susquehanna, Pennsylvania) |) | MB Docket No. 04-128 |
| |) | RM-10942 |
| |) | |
| (Barnwell, South Carolina) |) | MB Docket No. 04-129 |
| |) | RM-10943 |
| |) | |
| (Burnet, Texas) |) | MB Docket No. 04-130 |
| |) | RM-10944 |
| |) | |
| (Denver City, Texas) |) | MB Docket No. 04-131 |
| |) | RM-10945 |
| |) | |
| (Van Alstyne, Texas) |) | MB Docket No. 04-132 |
| |) | RM-10946 |
| |) | |
| (Fountain Green, Utah) |) | MB Docket No. 04-133 |
| |) | RM-10947 |
| |) | |
| (Toquerville, Utah) |) | MB Docket No. 04-134 |
| |) | RM-10948 |
| |) | |
| (Shenandoah, Virginia) |) | MB Docket No. 04-135 |
| |) | RM-10949 |
| |) | RM-10950 |
| |) | |
| (Augusta, Wisconsin) |) | MB Docket No. 04-136 |
| |) | RM-10951 |
| |) | |
| (Hayward, Wisconsin) |) | MB Docket No. 04-137 |
| |) | RM-10952 |
| |) | |
| (St. Marys, West Virginia) |) | MB Docket No. 04-138 |
| |) | RM-10953 |
| |) | RM-10954 |
| |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: April 14, 2004

Released: April 19, 2004

By the Chief, Audio Division:

Comment Date: June 10, 2004

Reply Comment Date: June 25, 2004

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth twelve Petitions for Rule Making to amend the FM Table of Allotments, Section 73.202(b) of the rules, to reserve certain vacant FM allotments for noncommercial educational (“NCE”) use.

2. In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Report and Order*”), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.¹ Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 200 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m contour of the proposed station. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. Thereafter, the Commission extended the expanded criteria to existing vacant FM allotments for which a Notice of Proposed Rule Making had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.²

3. In a Public Notice released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.³ In response to the Public Notice, we received 129 petitions for the reservation of 91 allotments. We believe that the public interest would be served by proposing the reservation of the above-captioned allotments for NCE use. Based upon our preliminary study, each petitioner has expressed an interest in applying for an FM allotment reserved for NCE use, is eligible to do so, and has demonstrated compliance with the expanded criteria set forth in the *NCE Report and Order*. We are combining the separate NCE reservation proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number, and the Commission’s Reference Center will maintain a file for each docket. This procedure will conserve Commission resources and expedite the processing of the FM allotment reservation petitions by avoiding duplicative actions.⁴ We will not entertain counterproposals or any proposal to modify the underlying allotment other than reserving the allotment for NCE use. Instead, a party may file rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. In addition, a party may file comments demonstrating that the reservation proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m contour of the proposed station.

¹ 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station a foreign broadcast station.

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Second Report and Order*”), 18 FCC Rcd 6691 (2003).

³ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003).

⁴ The staff will release additional multiple docket notices of rulemakings during the next several weeks.

4. We request comment on the following reservation proposals.

A. MB Docket No. 04-127; RM-10941

Proposal: Reserve Channel 298A at Liberty, Pennsylvania for non-commercial use.

Petitioner: Arthur H. Harding, Esq.
Christopher G. Wood, Esq.
Mark B. Denbo, Esq.
c/o Youngshine Media, Inc.
Fleischman and Walsh, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 600
Washington, DC 20006

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|----------------------|----------------|-----------------|
| Liberty Pennsylvania | 298A | *298A |

Coordinates: 41-29-28 NL and 77-12-22 WL

B. MB Docket No. 04-128; RM-10942

Proposal: Reserve Channel 227A at Susquehanna, Pennsylvania for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|---------------------------|----------------|-----------------|
| Susquehanna, Pennsylvania | 227A | *227A |

Coordinates: 41-55-44 NL and 75-31-50 WL

C. MB Docket No. 04-129; RM-10943

Proposal: Reserve Channel 256C3 at Barnwell, South Carolina for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------------|----------------|-----------------|
| Barnwell, South Carolina | 256C3 | *256C3 |

Coordinates: 33-24-29 NL and 81-16-43 WL

D. MB Docket No. 04-130; RM-10944

Proposal: Reserve Channel 240A at Burnet, Texas for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Burnet, Texas | 240A | *240A |

Coordinates: 30-51-5 NL and 98-17-35 WL

E. MB Docket No. 04-131; RM-10945

Proposal: Reserve Channel 248C2 at Denver City, Texas for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------|----------------|-----------------|
| Denver City, Texas | 248C2 | *248C2 |

Coordinates: 33-1-53 NL and 102-48-47 WL

F. MB Docket No. 04-132; RM-10946

Proposal: Reserve Channel 260A at Van Alstyne, Texas for non-commercial use.

Petitioner: Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------|----------------|-----------------|
| Van Alstyne, Texas | 260A | *260A |

Coordinates: 33-27-8 NL and 96-27-21 WL

G. MB Docket No. 04-133; RM-10947

Proposal: Reserve Channel 260A at Fountain Green, Utah for non-commercial use.

Petitioner: Peter Gutmann, Esq.
c/o Intermountain Educational Communications, Inc.
Womble, Carlyle, Sandridge & Rice, PLLC
1401 I Street, NW, Seventh Floor
Washington, DC 20005

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|----------------------|----------------|-----------------|
| Fountain Green, Utah | 260A | *260A |

Coordinates: 39-37-42 NL and 111-38-24 WL

H. MB Docket No. 04-134; RM-10948

Proposal: Reserve Channel 280C at Toquerville, Utah for non-commercial use.

Petitioner: David A. O'Connor, Esq.
c/o Calvary Chapel of St. George
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|-------------------|----------------|-----------------|
| Toquerville, Utah | 280C | *280C |

Coordinates: 37-15-12 NL and 113-17-0 WL

I. MB Docket No. 04-135; RM-10949, RM-10950

Proposal: Reserve Channel 296A at Shenandoah, Virginia for noncommercial use.

Petitioners: Jeffrey D. Southmayd, Esq.
c/o Sister Sherry Lynn Foundation, Inc.
Southmayd & Miller
1220 19th Street, N.W., Suite 400
Washington, D.C. 20036

Patrick J. Vaughn, General Counsel
American Family Association
Post Office Drawer 2440
Tupelo, MS 38803

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
|------------------|----------------|-----------------|

Shenandoah, Virginia 296A *296A

Coordinates: 38-30-0 NL and 78-36-33 WL

J. MB Docket No. 04-136; RM-10951

Proposal: Reserve Channel 268C3 at Augusta, Wisconsin for non-commercial use.

Petitioner: Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------|----------------|-----------------|
| Augusta, Wisconsin | 268C3 | *268C3 |

Coordinates: 44-40-11 NL and 90-57-55 WL

K. MB Docket No. 04-137; RM-10952

Proposal: Reserve Channel 232C2 at Hayward, Wisconsin for non-commercial use.

Petitioner: Mark Follett
Starboard Media Foundation, Inc.
2300 Riverside Drive
Green Bay, WI 54301

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------|----------------|-----------------|
| Hayward, Wisconsin | 232C2 | *232C2 |

Coordinates: 46-15-4 NL and 91-23-1 WL

L. MB Docket No. 04-138; RM-10953, RM-10954

Proposal: Reserve Channel 287A at St. Marys, West Virginia for non-commercial use.

Petitioners: Thomas P. Taggart, Trustee/ Counsel
Fine Arts Radio, Inc.
8 Ransom Road
Athens, OH 45701

Kenneth E. Satten, Esq.
Timothy J. Cooney, Esq.
Rebecca A. Schillings
c/o West Virginia Educational Broadcasting Authority
Wilkinson, Barker, Knauer, LLP

2300 N Street, N.W., Suite 700
Washington, DC 20037

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|--------------------------|----------------|-----------------|
| St. Marys, West Virginia | 287A | *287A |

Coordinates: 39-18-3 NL and 81-15-19 WL

5. Comments, reply comments and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the pleading pertains. The Commission's authority to institute rulemaking 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 reserved.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 10, 2004 and reply comments on or before June 25, 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 or its counsel.

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, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 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 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 rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

9. For further information concerning a proceeding listed above, contact Rolanda F. Smith, (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

⁵ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549 (February 9, 1981).

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 its staff for the clarification or adduction of evidence or resolution of issues in this 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 any 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

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 the 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 reserved and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. 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 the 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.

4. 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.

5. 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.