

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

In the matter of	)	
	)	
Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	MB Docket No. 04-220
FM Broadcast Stations.	)	RM-10861
(Clayton, New Mexico)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: June 8, 2004**

**Released: June 10, 2004**

**Comments Date: August 2, 2004**

**Reply comments Date: August 17, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Clayton Community Broadcasters ("CCB"), proposing the allotment of Channel 248C1 at Clayton, New Mexico, and deletion of vacant Channel 248C1 at Raton, New Mexico.<sup>1</sup> CCB stated its intention to file an application for Channel 248C1 at Clayton.
2. In support of its request, CCB states that Channel 248C1 at Clayton will provide a first local FM service to 15,650 people. Clayton is the County Seat of Union County, New Mexico and is listed in the 2000 U.S. census with a population of 2,524 people. Clayton has its own post office, fire and police departments, local school system, Tourist Information Center and numerous organizations such as the American Legion and Boy Scouts and Girl Scouts. The community has a weekly newspaper, *The Union County Leader*, two banks, several restaurants and a hospital. CCB, in support of its proposal to delete Channel 248C1 at Raton, argues that a first FM service will be provided to Clayton while Raton will retain one full-time AM service and two full-time commercial FM services.
3. We believe CCB's request warrants consideration because the proposed allotment at Clayton would provide the community with its first local FM service. Channel 248C1 can be allotted to Clayton in compliance with the Commission's spacing requirements without a site restriction at coordinates 36-27-00 and 103-10-54. To accommodate the allotment at Clayton, it is necessary to delete vacant Channel 248C1 at Raton, New Mexico.<sup>2</sup> We shall seek comments as to whether we should delete Channel 248C1 at Raton, New Mexico. If an expression of interest is filed during the comment cycle in this proceeding, we would retain Channel 248C1 at Raton. It is Commission policy not to delete a channel in which interest has been expressed. However, if no interest is expressed for retention of Channel 248C1 in Raton

<sup>1</sup> On June 10, 2003, by letter, the FCC dismissed N'Joy Broadcasting's application for Channel 248C1 and deleted the call sign KGOY at Raton, New Mexico. See BMPH-20011217AAI.

<sup>2</sup> Channel 249A was allotted to Raton, New Mexico, with cut-off protection, at the request of N'Joy Broadcasting in MM Docket 96-206 to remove a conflict between two mutually exclusive applicants for Channel 243A at Raton. See 12 FCC Rcd 7657 (MM 1997). N'Joy Broadcasting filed an application for Channel 248C1 at Raton and was granted a construction permit for Channel 248C1. That application has been dismissed. See Note 1.

during the initial comment cycle, we shall delete the Channel to accommodate the allotment at Clayton.

4. In view of the fact that the proposed allotment could provide a first local FM broadcast service to Clayton, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 248C1 at Clayton and delete Channel 248C1 at Raton. 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 Clayton and Raton, New Mexico:

Community	Channel No.	
	Present	Proposed
Raton, New Mexico	230C1, 243A, 248C1	230C1, 243A
Clayton, New Mexico	-----	248C1

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 August 2, 2004, and reply comments on or before August 17, 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 CCB's counsel, as follows:

Richard J. Hayes, Jr.  
8404 Lee's Ridge Road  
Warrenton, Virginia 20186

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 12<sup>th</sup> 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 a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>3</sup>

9. For further information concerning this proceeding, contact Rolanda F. Smith, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are

<sup>3</sup> See *Certification that Section 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 FR 11549 (February 9, 1981).

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 petitioners 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

**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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (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, at its headquarters, 445 12th Street, S.W., Washington, D.C.