

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. )  
(Las Vegas, New Mexico) )

MM Docket No. 98-49  
RM-9248

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: April 1, 1998**

**Released: April 10, 1998**

Comment Date: June 1, 1998

Reply Comment Date: June 16, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by BK Radio ("petitioner") requesting the allotment of Channels 268A and 275A to Las Vegas, New Mexico, as the community's fourth and fifth local commercial FM services.

2. In support of its proposal, petitioner states that it is one of three applicants for Channel 244A at Las Vegas, and the allotment of Channels 268A and 275A would accommodate all three applicants' desires for a channel and avoid a comparative hearing for Channel 244A.<sup>1</sup> Petitioner requests that it be allowed to amend its application to specify Channel 268A and retain its cut-off protection. In addition, William Sims, a principal of Meadows, submits a statement requesting that it be allowed to amend its application to specify Channel 275A and retain its cut-off protection. Petitioner states that adoption of its request is in compliance with Commission policy, citing Roseburg, Oregon, 6 FCC Rcd 4369 (1991) and Copeland, Kansas, 5 FCC Rcd 7682 (1990). Should another party express an interest in a Class A channel at Las Vegas, petitioner states that Channel 224A is available for allotment.<sup>2</sup>

3. We believe petitioner's proposal warrants consideration. Channels 268A and 275A can be allotted to Las Vegas in compliance with the Commission's minimum distance separation

<sup>1</sup> Applications for Channel 244A at Las Vegas were filed by BK Radio (BPH-960829MH), Sangre de Cristo Broadcasting Co., Inc. (BPH-960828MZ) and Meadows Media, LLC ("Meadows") (BPH-960829MG).

<sup>2</sup> We note that Channel 224A is currently licensed to Christian Broadcasting Academy, Inc. as a translator station at Las Vegas for Station KLYT, Albuquerque, New Mexico. However, translators are considered as secondary services and are not protected against the initiation of a full service facility. See Section 73.512 of the Commission's Rules.

requirements and utilized at the transmitter site specified by both the petitioner and Meadows, which is located 3.9 kilometers (2.4 miles) west of the community.<sup>3</sup> Since there is an additional equivalent class channel available for other expressions of interest, we propose to allow petitioner and Meadows to amend their applications to specify Channel 268A and Channel 275A, respectively, and retain their cut-off protection. We also propose to allot Channel 224A to Las Vegas should an expression of interest in applying for the channel be received during the initial comment period herein. Channel 224A can be allotted to Las Vegas without the imposition of a site restriction.<sup>4</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Las Vegas, New Mexico	244A, 251C, 264C3	224A, 244A, 251C, 264C3, 268A, 275A

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 June 1, 1988, and reply comments on or before June 16, 1988, 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 the petitioner, or its counsel or consultant, as follows:

Lee J. Peltzman  
Shainis & Peltzman, Chartered  
1901 L Street, N.W., Suite 290  
Washington, D.C. 20036  
(Counsel to petitioner)

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

<sup>3</sup> The coordinates for Channels 268A and 275A at Las Vegas, NM, are 35-36-16 NL; 105-15-35.

<sup>4</sup> The coordinates for Channel 224A at Las Vegas are 35-36-00 NL; 105-13-00 WL.

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 Leslie K. Shapiro, 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 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 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  
Chief, Allocations Branch  
Policy and Rules Division  
Mass 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. 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 Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.