

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

MM Docket No. 89-7

In the Matter of

Amendment of Section 73.202(b), RM-6573
Table of Allotments,
FM Broadcast Stations.
(Kimberling City, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 11, 1989; Released: February 2, 1989

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Arthur C. Morris (petitioner) the Commission has before it for consideration a petition for rule making seeking the allotment of FM Channel 261A to Kimberling City, Missouri. Petitioner submitted information in support of the proposal.

2. We believe the proposal warrants consideration based on petitioner's expressed desire to provide Kimberling City with its first FM broadcast service. The channel can be allotted to Kimberling city in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules provided Channel 261A is deleted at Aurora, Missouri.¹ Channel 261A, Station KELE, Aurora, is licensed to KSWM-KELE Broadcasting Corporation, and has requested the substitution of Channel 263C2 for Channel 261A in MM Docket 87-474 (2 FCC Rcd 6690 (1987)). A *Report and Order* in that proceeding, adopted November 29, 1988, made the requested substitution. Since the allotment of Channel 261A at Kimberling City is contingent on the grant of the Aurora license on the higher class channel, we shall condition final action in this proceeding on the license grant. It is also necessary to impose a site restriction on Channel 261A 7.3 kilometers (4.5 miles) south of the community. The site restriction will prevent a conflict with the proposed upgrade of Station KELE, Aurora, to Channel 263C2.

3. Accordingly, in order to provide Kimberling City with its first local FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Kimberling City, Missouri	---	261A

4. IT IS ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail Return Receipt Requested, a copy of this Notice to the following:

Dale Hendrix
Aurora Broadcasting, Inc.
126 S. Jefferson
Aurora, Missouri 65605

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 **March 27, 1989**, and reply comments on or before **April 11, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Arthur C. Morris
Rt. 1 Box 350B
Bolivar, Missouri 65613

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 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 Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. 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

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

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 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(s) 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.)

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 Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

¹ The coordinates for Channel 261A are 36-34-27 and 93-25-16.