

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

MM Docket No. 89-24

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Princeville, Hawaii)

RM-6540

City	Channel No.	
	Present	Proposed
Princeville, Hawaii	--	250C1

### NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 10, 1989

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Charles Carrell (petitioner), the Commission has before it for consideration a petition for rule making seeking the allotment of Channel 250C1 to Princeville, Hawaii, as that community's first local FM service. Petitioner states his intention to apply for the channel, if allotted. The channel can be allotted to Princeville in compliance with the Commission's minimum distance separation requirements.<sup>1</sup>

2. Petitioner asserts that Princeville (pop. 500)<sup>2</sup>, is located on the North Shore of the Island of Kauai, which has a population 46,300. Petitioner states that Princeville is a resort community which welcomes hundreds of tourists each year. For example, the LPGA Women's Kemper Open tournament is held on the Princeville Makai Golf Course. Princeville is served by Princeville Airways with flights to the islands of Kauai, Molokai, Maui and the Big Island of Hawaii. Beach resorts include the Waiohai, on Piopu Beach, and the Princeville Sheraton.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably, and efficiently distribute frequencies "among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. Princeville is not listed in the U.S. census. Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Princeville is incorporated, or that it has social, economic or cultural indicia to qualify it as a "community" for allotment purposes. See *Ansley, Alabama*, 46 FR 58688 (1981); *Cascade Village, Colorado*, 48 FR 19917 (1983); *Ellwood, California* 50 FR 13031 (1985).

4. While we do not dispute that the transient population travelling in and around Princeville, on the North Shore of the Island of Kauai may have a need for radio service, the petitioner's primary obligation is to serve the needs and interests of the community to which he is licensed.<sup>3</sup> Therefore, petitioner is requested to clarify whether he intends to discharge his primary service obligation. We believe the petitioner's proposal to provide Princeville with its first local service, should it ultimately

be deemed a community, warrants further consideration. Therefore, we shall invite comments on the proposal, as indicated infra.

5. In view of the fact that Princeville, Hawaii could receive its first local FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

6. 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.

7. Interested parties may file comments on or before April 3, 1989, and reply comments on or before April 18, 1989, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Julian P. Freret  
Booth, Freret & Imlay  
1920 N Street, N.W.  
Suite 520  
Washington, D.C. 20036  
(Counsel for petitioner).

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. 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.

9. For further information concerning this proceeding, contact Nancy J. Walls, 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.

#### FOOTNOTES

<sup>1</sup> The coordinates for Princeville are 22-00-00 and 159-22-50.

<sup>2</sup> Population figure was provided by petitioner.

<sup>3</sup> See Section 73.1120 of the Commission's Rules.

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

In re Applications for  
Transfer of Control of

SOUTHERN	File Nos. 1038-DSE-TC-88
SATELLITE	1039-DSE-TC-88(2)
SYSTEMS, INC.,	1551-CF-TC(2)-88

Licensee of earth stations WK47,  
Douglasville, GA and licensee of  
point-to-point microwave stations  
WCU578, Atlanta, GA and  
WLB957, Douglasville, GA; Tempo  
Television, Inc., licensee of  
earth station E4599,  
Douglasville, GA

**ERRATUM**

Released: February 2, 1989

Paragraph 6 of the Memorandum Opinion and Order,  
DA 88-2001 (released January 5, 1989) is corrected by  
adding the following sentence.

This order is to take effect upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock  
Chief, Common Carrier Bureau