

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

City	Channel No.	
	Present	Proposed
Gleneden Beach, Oregon	264C2	236C2
Sweet Home, Oregon	296A	296C2
Toledo, Oregon	296A	264A

MM Docket No. 89-13

In the Matter of

Amendment of Section 73.202(b), RM-6547
Table of Allotments,
FM Broadcast Stations.
(Gleneden Beach, Sweet Home and
Toledo Beach, Oregon)

**NOTICE OF PROPOSED RULE MAKING AND
ORDER TO SHOW CAUSE**

Adopted: January 17, 1989; Released: February 8, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Galaxy Broadcast Partners (petitioner), requesting the substitution of Channel 296C2 for Channel 296A at Sweet Home, Oregon, and the modification of its license for Station KNKN to specify the higher powered channel. In order to comply with the Commission's minimum distance separation requirements, petitioner also requests the substitution of Channel 264A for Channel 296A at Toledo, Oregon, the modification of Station KTDO-FM's license accordingly, and the substitution of Channel 236C2 for unused Channel 264C2 at Gleneden Beach, Oregon.¹ Petitioner states that it will apply for Channel 296C2, if allotted to Sweet Home, and reimburse the licensee of Station KTDO-FM at Toledo for the costs associated with its change of channel.

2. Channel 296C2 can be allotted to Sweet Home and Channel 264A can be allotted to Toledo in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter sites of Station KNKN and Station KTDO-FM, respectively. Channel 236C2 can be allotted to Gleneden Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.²

3. As requested, we shall also propose to modify petitioner's license for Station KNKN to specify operation on Channel 296C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Sweet Home or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such other interested parties.

4. We believe the public interest would be served by proposing the channel substitutions discussed above since it could enable Station KNKN at Sweet Home, Oregon, to expand its coverage area. 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 communities listed below, to read as follows:

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Charles E. Farmer, licensee of Station KTDO, Toledo, Oregon, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 264A as proposed herein instead of the present Channel 296A.

6. Pursuant to Section 1.87 of the Commission's Rules, Charles E. Farmer may, not later than April 3, 1989, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Charles E. Farmer to furnish additional information. If Charles E. Farmer raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Charles E. Farmer will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station KTDO-FM as follows: Charles E. Farmer, Hwy 20 at Dundon Road, Toledo, Oregon 97391.

8. 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.

9. 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 petitioner, or its counsel or consultant, as follows:

Heather McDaniel
Galaxy Broadcast Partners
33692 Santiam Hwy.
Lebanon, Oregon 97355
(Petitioner)

10. 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.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, 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

¹ Channel 264C2 was recently allotted to Gleneden Beach by *Report and Order*, 3 FCC Rcd 6464 (1988).

² The coordinates for Channel 296C2 at Sweet Home are North Latitude 44-26-05 and West Longitude 122-42-23. The coordinates for Channel 264A at Toledo are North Latitude 44-38-40 and West Longitude 124-00-52. The coordinates for Channel 236C2 at Gleneden Beach are North Latitude 44-52-53 and West Longitude 124-01-59.