

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

MM Docket No. 96-4

In the Matter of

Amendment of Section 73.202(b), RM-8733
Table of Allotments,
FM Broadcast Stations.
(Salem and Cherokee Village,
Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 15, 1995; Released: January 29, 1996

Comment Date: March 21, 1996

Reply Comment Date: April 8, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a joint petition for rule making filed on behalf of Bragg Broadcasting Corporation ("petitioner"), licensee of Station KSAR(FM), Channel 240A, Salem, Arkansas, and KFCM, Inc., licensee of Station KFCM(FM), Channel 265A, Cherokee Village, Arkansas, requesting the substitution of Channel 265A for Channel 240A at Salem, Arkansas, as well as the substitution of Channel 252A for Channel 265A at Cherokee Village, to accommodate the Salem substitution, and concomitant modification of the license for Stations KSAR(FM) and KFCM(FM) accordingly.¹ Petitioner states that it will apply for the channels if allotted to Salem and Cherokee Village, as requested.

2. In support of its proposal petitioner states that Station KSAR(FM) is currently precluded from operating with full Class A facilities due to minimum distance separation constraints. However, petitioner asserts that the substitution of channels at Salem and Cherokee Village will enable Station KSAR(FM) to improve its facilities and expand its coverage area.

3. We believe the public interest would be served by proposing the substitution of Channel 265A for Channel 240A at Salem, Arkansas, as well as the substitution of Channel 252A for Channel 265A at Cherokee Village, Arkansas, since it will enable Station KSAR(FM) to provide Salem with an improved coverage FM service. An engineering analysis of petitioner's proposal confirms that

Channel 265A can be allotted to Salem consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's suggested site, located 5.5 kilometers (3.4 miles) west of the community at coordinates 36-25-00 and 91-48-00. The site restriction is required to avoid a short spacing to the authorized site of Station KAWW-FM, Channel 264C2, Heber Springs, Arkansas, at coordinates 35-27-26 and 92-02-11. Channel 252A can be allotted to Cherokee Village at the licensed site of Station KFCM(FM) at coordinates 36-16-29 and 91-30-18.²

4. As requested, we will propose to modify petitioner's license for Station KSAR(FM) to specify operation on Channel 265A at Salem, Arkansas, and for Station KFCM(FM) to specify operation on Channel 252A at Cherokee Village, Arkansas. In addition, we will not accept competing expressions of interest for the use of Channel 265A at Salem or for Channel 252A at Cherokee Village since the procedures set forth in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984), and Section 1.420(g) of the Commission's Rules do not apply in this instance as no upgrade in facilities is requested.³

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Salem, Arkansas	240A	265A
Cherokee Village, Arkansas	265A	252A

6. IT IS ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the licensee of Station KTLO-FM, as follows: KTLO Limited Partnership, Post Office Box C, Mountain Home, AR 72653.

7. 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.

8. Interested parties may file comments on or before **March 21, 1996**, and reply comments on or before **April 8, 1996**, 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 petitioners' counsel, as follows:

Channel 252A at Mountain Home. We will serve a copy of this *Notice* on KTLO Limited Partnership, licensee of Station KTLO-FM.

³ Channels of the same class are considered to be equivalent unless a demonstration has been made that a station cannot be built for such reasons as environmental or FAA constraints. See *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), *rev. denied*, 4 FCC Rcd 2184, 2185 (1989).

¹ Petitioner advises that it is also the sole owner of KFCM, Inc.

² Proposed Channel 252A at Cherokee Village is short spaced to the licensed site of Station KTLO-FM, Channel 252A, Mountain Home, Arkansas, at coordinates 36-20-55 and 92-23-59. However, Station KTLO-FM was modified to Channel 250C2 in MM Docket No. 92-176. See 8 FCC Rcd 5061 (1993). Coordinates at the site specified in Station KTLO-FM's construction permit are 36-20-55 and 92-23-59 (File No. BPH-9409141F). Therefore, Station KTLO-FM is no longer entitled to protection for its former

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9. 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), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, 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

APPENDIX

1. Pursuant to authority contained 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.) 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 Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.