

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

MM Docket No. 96-94

In the Matter of

Amendment of Section 73.202(b), RM-8790
Table of Allotments,
FM Broadcast Stations.
(Eufaula, Wagoner and Warner,
Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1996; Released: April 25, 1996

Comment Date: June 17, 1996
Reply Comment Date: July 2, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tri-Mac Broadcasting ("petitioner") requesting the reallocation of Channel 271A from Wagoner to Warner, Oklahoma, and the modification of Station KRQZ-FM's license to specify Warner as its community of license. To accommodate the allotment at Warner, petitioner also proposes the substitution of Channel 273C3 for Channel 272A at Eufaula, Oklahoma.¹ Petitioner states that it will apply for the channel, if allotted.

2. Petitioner states that Warner (population 1,462 persons)² has no local aural transmission service while Wagoner (population 6,894 persons) receives local transmission service from Station KRQZ-FM and daytime-only AM Station KXTD. Thus, it submits that the reallocation of Channel 271A to Warner would result in a preferential arrangement of allotments since it would provide the community with its first local aural service. In addition, petitioner states that Station KRQZ-FM could increase its Class A facilities from its present 3 kW to 6 kW.

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 271A to Warner could provide the community with its first local aural transmission service, without depriving Wagoner of its sole local aural transmission service, and enable Station KRQZ-FM to operate with full Class A facilities of 6 kW. We have determined that neither community lies within an Urbanized Area. Since petitioner is proposing to change its transmitter site, there will be areas which will lose existing

reception service as well as areas which will gain new reception service. Therefore, we request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 271A is reallocated to Warner. In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas. We also propose to modify Station KRQZ-FM's license to specify Channel 271A at Warner instead of its present community of Wagoner, and to modify Station KCES' license to specify Channel 273C3 in lieu of its present Channel 272A at Eufaula. In accordance with Sections 1.420(i) and 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 271A at Warner or Channel 273C3 at Eufaula. Finally, since KCES already has submitted a one-step upgrade application proposing the same change as outlined herein, no counterproposal will be accepted which conflicts with that application. See *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 (1993).

4. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station licensee or permittee for the costs incurred. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). In this case, no such reimbursement is required since the licensee of Eufaula Station KCES filed its one-step upgrade application prior to the filing of this petition for rule making.

Technical Summary

5. Channel 273C3 can be allotted to Eufaula in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) south, which is the transmitter site specified in Station KCES' pending application (BPH-960319ID). Channel 271A can be allotted to Warner with a site restriction of 3.0 kilometers (1.9 miles) west to avoid a short-spacing to the reference coordinates for Station KEOK, Channel 269C3, Tahlequah, OK, and Station KENA-FM, Channel 271C3, Mena, AR.³

6. 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:

City	Present	Channel No.	
		Proposed	
Eufaula, Oklahoma	272A	273C3	
Wagoner, Oklahoma	271A	--	
Warner, Oklahoma	--		271A

¹ Harmon Davis, licensee of Station KCES, Eufaula, Oklahoma, has filed a one-step upgrade application specifying Channel 273C3 at the same transmitter site coordinates as proposed herein. As part of this petition for rule making, he has also submitted his consent to the substitution of channels and

change of transmitter site at Eufaula. Therefore, an *Order to Show Cause* is not being issued to Harmon Davis.

² Population figures are taken from the 1990 U.S. Census.

³ The coordinates for Channel 273C3 at Eufaula, OK, are 35-08-06 North Latitude and 95-31-00 West Longitude. The coordinates for Channel 271A at Warner, OK are 35-29-16 NL; 95-20-15 WL.

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 **June 17, 1996**, and reply comments on or before **July 2, 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 petitioner, or its counsel or consultant, as follows:

John F. Garziglia, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel to petitioner)

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

10. IT IS ORDERED, That a copy of this *Notice of Proposed Rule Making* shall be sent, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the licensee of Station KCES, as follows: Tri-City Broadcasting Company, Route 4, Box 1290, Eufaula, OK 74432.

11. 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

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.) 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.