

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-41
Table of Allotments,	)	RM-9369
FM Broadcast Stations.	)	
(Oakville, Raymond, and South Bend,	)	
Washington)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 1, 2000;

Released: March 10, 2000

Comment Date: May 3, 2000

Reply Comment Date: May 18, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Jodesha Broadcasting, Inc. ("petitioner"), licensee of Station KFMY(FM), Channel 249C1,<sup>1</sup> Raymond, Washington, and licensee of Station KJET(FM), Channel 289C2, South Bend, Washington, setting forth three proposals. First, petitioner proposes the reallocation of Channel 249C1 from Raymond to Oakville, Washington, and the modification of Station KFMY(FM)'s license accordingly. Second, it proposes the reallocation of Channel 289C2 from South Bend to Raymond, Washington, and the modification of Station KJET(FM)'s license accordingly. Third, it proposes the allotment of Channel 300A to South Bend, Washington. Petitioner states its intention to apply for the respective channels, if allotted to the specified communities.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Oakville is an incorporated community with a 1990 U.S. Census population of 665 persons. It has a local fire and police department, public library, and a municipal court, thus, petitioner asserts that it qualifies as a "community" for allotment purposes. Petitioner states that

<sup>1</sup> On December 23, 1999, we granted a one-step application (File No. BPH-199709231E) by Jodesha Broadcasting, Inc., upgrading Station KFMY(FM) from Channel 249C3 to Channel 249C1 at Raymond, Washington.

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the proposal is in compliance with the Commission's technical requirements. Moreover, petitioner

also notes that the proposed allotments would result in service to an additional 315,985 persons. Petitioner recognizes that Channel 289C2 is the only channel currently allotted to South Bend. For this reason, it also proposes allotting Channel 300A to South Bend in order to retain a local aural service. Additionally, since the allotment of Channel 289C2 to Raymond can be implemented at Station KJET(FM)'s current construction permit site, the reallocation would not result in any loss of service to South Bend.

3. We believe that the proposal warrants consideration since the reallocation of Channel 249C1 from Raymond to Oakville, Washington, would provide the community with first local aural transmission service; the reallocation of Channel 289C2 from South Bend to Raymond, Washington, would allow the community to retain a first local aural transmission service; and the allotment of Channel 300A at South Bend, Washington, would also allow the community to retain a first local aural transmission service. Since the reallocation of Channel 249C1 to Oakville will involve a change in transmitter site, petitioner is requested to provide a gain and loss area study. We also request such a study with respect to the replacement of Channel 300A for Channel 289C2 at South Bend, Washington. None of the proposed allotments are in or near an urbanized area. Therefore, a Tuck analysis is not applicable.<sup>2</sup> However, petitioner is requested to provide information as to the overall public interest benefits that would be derived by the proposed allotments.

#### Technical Summary

4. An engineering analysis has determined that Channel 249C1 can be reallocated to Oakville in compliance with the Commission's minimum distance separation requirements with respect to all domestic allotments at petitioner's requested site.<sup>3</sup> However, the allotment will result in a short-spacing to Station CBUF(FM), Channel 249C, Vancouver, British Columbia. Additionally, Channel 289C2 can be reallocated to Raymond in compliance with the Commission's minimum distance separation requirements with a site restriction of 27 kilometers (16.8 miles) north at petitioner's requested site;<sup>4</sup> and Channel 300A can be allotted to South Bend with a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to the licensed site of Station KNDD(FM), Channel 299C, Seattle, Washington, and to the licensed site of Station KHPE(FM), Channel 300C, Albany, Oregon.<sup>5</sup> Since Oakville, Raymond, and South Bend are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the

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<sup>2</sup>See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>3</sup>The coordinates for Channel 249C1 at Oakville are 46-57-14 North Latitude and 123-29-21 West Longitude.

<sup>4</sup>The coordinates for Channel 289C2 at Raymond are 46-55-53 North Latitude and 123-44-02 West Longitude.

<sup>5</sup>The coordinates for Channel 300A at South Bend are 46-38-19 North Latitude and 123-49-54 West Longitude.

Canadian government has been requested, with concurrence of the Oakville allotment requested as a specially negotiated, short-spaced allotment. As requested, we shall propose to modify Station KFMY(FM)'s license to specify operation on Channel 249C1 at Oakville, Washington; and Station KJET(FM)'s license to specify operation on Channel 289C2 at Raymond, Washington, as their new communities of license. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 249C1 at Oakville, Washington, or Channel 289C2 at Raymond, Washington.

5. 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:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Oakville, Washington	---	249C1
Raymond, Washington	249C1	289C2
South Bend, Washington	289C2	300A

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 May 3, 2000, and reply comments on or before May 18, 2000, 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, or their counsel or consultants, as follows:

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, D.C. 20007  
(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 Sharon P. McDonald, 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

Attachment: Appendix

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 protection. 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 proposals 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.