

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

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|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MB Docket No. 02-105 |
| Table of Allotments, |) | RM-10396 |
| FM Broadcast Stations. |) | |
| (Boonville, California) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: May 15, 2002

Released: May 24, 2002

Comment Date: July 15, 2002

Reply Comment Date: July 30, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein a petition for rule making filed on behalf of Deas Communications, Inc. (“Deas”), licensee of Station KSXY(FM) (KSXY), Channel 240A, Healdsburg, California, proposing the substitution of Channel 300A¹ for vacant Channel 241A at Boonville, California. Deas operates Station KSXY on Channel 240A at Healdsburg, California. Using its current facilities, Station KSXY must operate with a directional antenna system to provide protection, pursuant to Section 73.215 of the Commission’s Rules, toward the vacant and unapplied for Channel 241A at Boonville, California. The proposed substitution of Channel 300A for vacant Channel 241A at Boonville, California would enable Station KSXY to discontinue using a directional FM antenna and to increase its power to maximum Class A (equivalent) FM facilities. Deas asserts that this channel change would allow Station KSXY to provide service to an additional 53,277 persons.

2. A staff analysis has determined that Channel 300A can be allotted to Boonville, California, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission’s Rules, with a site restriction of 11.2 kilometers (7 miles) west of Boonville.²

3. Since allotting Channel 300A to Boonville, California, and removing the vacant Channel 241A allotment from that city would enable Deas to provide improved aural transmission service to

¹ Deas proposed the allotment of Channel 286A at Boonville, but this channel would be mutually exclusive with a recently-filed application by Station KRPQ(FM), Rohnert, California. Our engineering staff has determined that the allotment of Channel 300A would not be mutually exclusive with that application. Therefore, we propose substituting Channel 300A for Channel 241A at Boonville.

² The coordinates for the new allotment are: 39-01-33 NL and 123-29-33 WL.

Healdsburg, California, and areas surrounding that city, the Commission believes that it would serve the public interest to solicit comments on the possible allotment of Channel 300A to Boonville, California, and the possible removal of Channel 241A from that city. 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 Boonville, as follows:

| <u>Community</u> | <u>Channel No.</u> | |
|-----------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Boonville, California | 241A | 300A |

4. 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.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 15, 2002, and reply comments on or before July 30, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard M. Weiss, Esq.
 Alison J. Shapiro, Esq.
 Fletcher, Heald & Hildreth, P.L.C.
 1300 North 17th Street, 11th Floor
 Arlington, Virginia 22209

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary,

Federal Communications Commission.

7. 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.

8. For further information concerning this proceeding, contact R. Barthen Gorman, 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 that 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
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

Attachment: Appendix

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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 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 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 Twelfth Street, SW., Room 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 Twelfth Street, SW., Washington, D.C. 20554.