

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 08-150
FM Table of Allotments,)	RM-11390
FM Broadcast Stations.)	
(Asbury, Iowa, Maquoketa, Iowa, and Mineral Point, Wisconsin))	

**NOTICE OF PROPOSED RULEMAKING
 AND ORDER TO SHOW CAUSE**

Adopted: July 30, 2008

Released: August 1, 2008

Comments Date: September 22, 2008
Reply Comments Date: October 7, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by KM Radio of Independence, LLC (“Petitioner”), licensee of Station KQMG-FM, Independence, Iowa, requesting the allotment of Channel 238A at Mineral Point, Wisconsin, as its first local service, and the substitution of Channel *254A, reserved for noncommercial educational (NCE) use, for vacant Channel *238A, reserved for NCE use, at Asbury, Iowa. The Petitioner states that these requested allotments are intended to accommodate a hybrid community of license application, proposing the substitution of Channel 236A for Channel 237A at Independence, Iowa, the reallocation of Channel 236A to Solon, Iowa, and the associated modification of the license of Station KQMG-FM.¹ To facilitate the hybrid community of license application and the proposed Asbury channel substitution, the Petitioner requests that the Commission issue an order to show cause to Maquoketa Broadcasting Company, licensee of Station KMAQ-FM, Channel 236A, Maquoketa, Iowa, as to why KMAQ-FM’s channel should not be changed to Channel 237A.

2. Petitioner states that Mineral Point is listed in the 2000 U.S. Census as a city with a population of 2,617 persons.² As such, Petitioner states that Mineral Point is considered as a community for “allotment proposes.” A staff engineering analysis confirms that Channel 238A can be allotted to Mineral Point consistent with the minimum distance separation requirements of the Commission’s rules at city reference coordinates 42-51-36 NL and 90-10-47 WL. In compliance with the Commission's new procedures,³ Petitioner has concurrently filed a FCC Form 301 application for Channel 238A at Mineral Point, and the

¹ See File No. BPH-20070119AEI.

² Additionally, Petitioner states that Mineral Point is a historic city that is governed by elected officials (a mayor and two-alderperson city council), as well as a city clerk/treasurer, city attorney and zoning administrator, chamber of commerce, and a variety of local businesses. Mineral Point has its own zip code (53565) and post office, and municipal services such as police department, water and sewer department, city garage, volunteer fire department and emergency rescue squad, elementary and middle school, community library, and at least seven local churches. Mineral Point is served by a weekly newspaper, the *Mineral Point Democrat Tribune*. Mineral Point also has several recreational, civic, and cultural organizations.

³ See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

necessary filing fees.⁴

3. To accommodate the proposed Mineral Point allotment, Petitioner requests the substitution of reserved Channel *254A for vacant, reserved Channel *238A at Asbury, Iowa.⁵ A staff engineering analysis indicates that Channel *254A can be allotted to Asbury consistent with the minimum distance separation requirements of the Rules with a site restriction 3.7 kilometers (2.3 miles) southwest of the community located at reference coordinates 42-29-23 NL and 90-46-56 WL.

4. To facilitate the proposed Asbury channel substitution, Petitioner also proposes the substitution of Channel 237A for Channel 236A at Maquoketa, Iowa, and modification of the license of Station KMAQ-FM to reflect the change.⁶ To this end, we are issuing an *Order to Show Cause* directed to Maquoketa Broadcasting Company to show cause why its license for Station KMAQ-FM should not be modified to specify operation on Channel 237A at Maquoketa in lieu of Channel 236A. In compliance with our *Circleville* policy,⁷ Petitioner states that it will reimburse the licensee of Station KMAQ-FM for its reasonable expenses associated with changing its channel to Channel 237A at Maquoketa. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.⁸ Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Rules.⁹

5. The Petitioner's proposal warrants consideration because it could provide a first local service to the community of Mineral Point, Wisconsin. Therefore, we will solicit comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Rules, as follows:

Community	Channel No.	
	Present	Proposed
Asbury, Iowa	*238A	*254A
Mineral Point, Wisconsin	----	238A

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Maquoketa Broadcasting Company, licensee of KMAQ-FM, SHALL SHOW CAUSE

⁴ See File No. BNPH-20070119AGH.

⁵ This proposed Asbury channel substitution also accommodates the hybrid community of license application proposing the reallocation of Station KQMG-FM from Independence to Solon, Iowa, as its first local service. See File No. BPH-20070119AEI. Additionally, we reclassified the license of Station KGGG(FM) to specify operation on Channel 235C0 in lieu of Channel 235C at Des Moines, Idaho, on June 11, 2008, to facilitate the proposed Asbury channel substitution and the Station KGGG community of license application. See File No. BMLH-19870212KB; see also, *Reclassification of License of FM Station KGGG, Des Moines, Iowa*, Order to Show Cause, 22 FCC Rcd 18528 (MB 2007).

⁶ Channel 237A can be allotted at Station KMAQ-FM's current licensed site at coordinates 42-05-26 NL and 90-37-43 WL.

⁷ *Circleville, Ohio*, Memorandum Opinion and Order, 8 FCC 2d 159 (1967) ("*Circleville*").

⁸ 47 U.S.C. § 316(a).

⁹ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

why its license SHOULD NOT BE MODIFIED to specify operation on Channel 237A in lieu of Channel 236A at Maquoketa, Iowa.

7. Pursuant to Section 1.87 of the Commission's Rules, Maquoketa Broadcasting Company, may, no later than 2008, file a written statement showing with particularity why its respective license (File No. BLH-19990316KC) should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Maquoketa Broadcasting Company to furnish additional information. If Maquoketa Broadcasting Company 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 modifications for hearing. If no written statement is filed by the date referred to above, Maquoketa Broadcasting Company will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Imaging Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

John Neely, Esq.
c/o Maquoketa Broadcasting Company
Miller & Neely, P.C.
6900 Wisconsin Avenue, Suite 704
Bethesda, MD 20815

Maquoketa Broadcasting Company
129 North Main Street
Maquoketa, Iowa 52060

9. 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.

10. Interested parties may file comments on or before September 22, 2008, and reply comments on or before October 7, 2008 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 Petitioner, as follows:

Jeffrey L. Timmons, Esq.
1400 Buford Highway, Suite G-5
Sugar Hill, Georgia 30518
(Counsel to KM Radio of Independence, LLC)

11. Parties are required to 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, Natek, 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. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹⁰ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

13. For further information concerning this proceeding, contact Rolanda F. Smith, (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 petitioners 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
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

¹⁰ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (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 Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.