

[Docket No. FI-1193]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Manitowoc, Manitowoc County, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), (42 U.S.C. 4001-4128), and 24 CFR Part 1917 (§ 1917.10), hereby gives notice of his final determinations of flood elevations for the City of Manitowoc, Manitowoc County, Wisconsin under § 1917.9 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain manage-

ment measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the first floor bulletin board, City Hall, 817 Franklin Street, Manitowoc, Wisconsin.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Manitowoc River	Chicago & Northwestern Railroad	585	60	0
	Broadway St. (extended)	588	0	500
	North 41st St. (extended)	589	0	1,000
Little Manitowoc River	Waldo Blvd.	586	60	0
	Cleveland Ave.	584	60	80
	All corporate limits	589	40	200
Silver Creek	South 10th St.	608	120	0
Lake Michigan	South of Green St.	584	(1)	(1)
	North of Park St.	584	(1)	(1)
	Commercial St.	584		20
	Columbus St. (extended)	584		20

¹ At shoreline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-32480 Filed 11-5-76;8:45]

Title 45—Public Welfare

CHAPTER V—FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

SUBCHAPTER F—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS UNDER TITLE II OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUBLIC LAW 87-846 AND PROTESTS UNDER PUBLIC LAW 94-542

PART 581—FILING OF PROTESTS AND PROCEDURES THEREFOR

Pursuant to Pub. L. 94-542, approved October 18, 1976, the Foreign Claims Settlement Commission of the United States is authorized to receive protests of United States nationals relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, expiration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the

provisions of Public Law 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended.

Therefore, in accordance with the provisions of Pub. L. 94-542, the Regulations of the Commission are amended as follows:

Subchapter F, Chapter V, Title 45 of the Code of Federal Regulations is hereby amended by adding Part 581.

Sec.

581.1 Time for filing.

581.2 Information required for filing protests.

581.3 Hearings.

AUTHORITY: Pub. L. 94-542.

§ 581.1 Time for filing.

Protests of United States nationals relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, ex-

piration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the provisions of Pub. L. 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended, authorized by section 615 of Pub. L. 94-542, approved October 18, 1976, shall be filed with the Commission on or before February 7, 1977.

§ 581.2 Information required for filing protests.

(a) No official form is required for filing a protest. Protests shall be filed, in writing, signed by the claimant or his legal representative. The protest shall include: (1) The name of the claimant as set forth in the Commission's decision issued on the claim under Pub. L. 87-846; (2) the claim number previously assigned by the Commission; (3) the grounds for the protest, amount of increase in the award requested, together with all documentation and legal argument which the claimant wishes the Commission to consider in determining the merits of the protest; (4) a specific request for a hearing, if desired.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing the protests referred to herein shall not be considered as a timely filing of a protest under Pub. L. 94-542.

§ 581.3 Hearings.

(a) Upon specific written request, made at the time of filing the protest, the Commission may grant the claimant a hearing for the presentation of oral testimony and argumentation in support of the protest.

(b) Hearings shall be held upon not less than seven days notice.

(c) Hearing procedures as provided for under § 531.6(b)-(d), Subchapter C of this chapter shall be applicable to protests under this subchapter.

(d) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at the time of filing the protest. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription is his responsibility.

(e) Subsequent to the hearing, if any, the Commission will issue a final determination on the protest within the remaining 30 days from the date of filing of the protest, and no appeal from such determination shall be granted.

This amendment shall become effective on November 8, 1976.

Dated: November 3, 1976.

WAYLAND D. McCLELLAN,
General Counsel.

[FR Doc.76-32745 Filed 11-5-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20746]

PART 15—RADIO FREQUENCY DEVICES

Class D CB Transmitters and Transmitter Section of Class D CB Transceivers

MEMORANDUM OPINION AND ORDER

Correction

In FR Doc. 76-31636 appearing at page 47442 in the FEDERAL REGISTER of Friday, October 29, 1976 the following correction should be made. On page 47444, third column, § 15.59(h) (1) and (2) should have appeared as follows:

	μ/Vm at 3m
(1) For a CB receiver model initially placed in production after January 1, 1977	110
(2) For a CB receiver model initially placed in production after January 1, 1978	40

PART 0—COMMISSION ORGANIZATION

Delegation of Authority; Chairman and Executive Director

Adopted: November 1, 1976.

Released: November 2, 1976.

Order. In the matter of editorial amendment of Part 0 of the rules, delegations of authority.

1. The Commission has clarified the authority of the Chairman and the Executive Director with respect to the procurement and contract activities of the agency. It is appropriate that the authority of those officials in this respect be reflected in Subpart B of Part 0 of the rules, "Delegations of Authority".

2. Accordingly, §§ 0.211 and 0.231 of the rules and regulations are amended as set out below. Authority for these amendments is set out in sections 4(i) and 5(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 155(d), and in § 0.231(d) of the rules and regulations, 47 CFR 0.231. Because the amendments are editorial in nature and relate to internal agency organization, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable, and these changes will become effective November 16, 1976.

(Secs. 4, 5, 48 Stat., as amended, 1066, 1068; 47 U.S.C. 154, 155.)

FEDERAL COMMUNICATIONS COMMISSION.

RICHARD D. LICHTWARDT,
Executive Director.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.211(e) is revised to read as follows:

§ 0.211 Chairman.

(e) Authority to act as "Head of the Agency" or "Agency Head" for administrative determinations required by Federal Procurement Regulations and Federal Management Circulars.

2. Section 0.231(g) is added to read as follows:

§ 0.231 Authority delegated.

(g) The Executive Director is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission.

[FR Doc. 76-32754 Filed 11-5-76; 8:45 am]

[Docket No. 20314; FCC 76-1001; RM-2287]

PART 73—RADIO BROADCAST SERVICES
FM Broadcast Stations in Certain Cities in Nebraska

Adopted: October 27, 1976.

Released: November 4, 1976.

Report and order—Proceeding terminated. In the matter of amendment of § 73.202(b), Table of assignments, FM Broadcast Stations. (Cheyenne, Wyoming and Terrytown, Nebraska), Docket No. 20314, RM-2287.

1. The Commission has under consideration its notice of proposed rulemaking, adopted December 30, 1974 (40 FR 2713), proposing that the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) be amended by substituting Channel 264 for Channel 292A at Cheyenne, Wyoming, and by substituting Channel 280A for Channel 265A at Terrytown, Nebraska. The proposal also included a request by petitioner, KVWO, Inc., licensee of Stations KVWO(AM) and KVWO-FM (Channel 292A), Cheyenne, to modify its FM license to specify Channel 264 as its channel of operation. Comments and other pleadings responsive to the Notice were filed by: Petitioner: KRAE, Inc., licensee of AM Station KRAE, Cheyenne; and Rumberger Enterprises, Inc., licensee of AM Station KNIE, Cheyenne.

2. Cheyenne (population 49,914),² located in Laramie County (population 56,360), is the most populous city in and the capital of Wyoming. Local aural broadcast services in Cheyenne are provided by four AM stations: KFBC (unlimited-time), licensed to Frontier Broadcasting Co.; KNIE (unlimited-time), licensed to Dencolo; KRAE (daytime-only), licensed to KRAE, Inc.; and KVWO (daytime-only), licensed to petitioner; and by two FM stations: KFBC-FM (Channel 250) licensed to Frontier Broadcasting and KVWO-FM (Channel 292A) licensed to petitioner. The assignment of Channel 264 to Cheyenne would require the deletion of Channel 265A at Terrytown, Nebraska, where it is presently unoccupied and unapplied for, in order to comply with the Commission's

minimum mileage separation requirements. The substitute assignment of Channel 280A at Terrytown can be made without affecting existing FM assignments. In the Notice, relevant economic considerations were discussed. Since they support the assignment of Channel 264 to Cheyenne, those factors are not repeated here.

3. KRAE, Inc., has submitted a counterproposal to retain Channel 292A and to assign Channel 264 to Cheyenne. It states that it wishes to apply for the proposed Class C channel if assigned. It alleges that it is now operating at a significant competitive disadvantage since it is limited to a daytime-only AM operation while its competitors are able to provide nighttime service.³ Regarding the intermixture of classes of channels that would result from the retention of Channel 292A at Cheyenne, KRAE, Inc., argues that such retention would not represent a new departure from the Commission's policy since intermixture is already present. Moreover, a third Class C channel cannot be assigned to Cheyenne, according to KRAE, Inc., because, other than Channel 264, there are none available. Regarding our population criteria for assigning FM channels,⁴ it is noted that according to a study prepared by the Cheyenne Department of Model Cities, by 1985 Cheyenne's population is expected to rise to 60,000 persons. Further, Wyoming has two communities with two Class C channels and with less than one-third the population of Cheyenne.⁵ Thus, it is argued that strict compliance with the population guidelines would violate section 307(b) which requires a "fair, efficient, and equitable distribution" of radio services "among the several States and communities." Finally, KRAE, Inc., mentions that it would be willing to apply for the Class A channel, if retained, and that in light of such expressed interest, Channel 292A should not be deleted from Cheyenne.

4. Rumberger Enterprises, Inc., states that it also supports the proposal to assign Channel 264 and to retain Channel 292A at Cheyenne and that it also opposes the requested modification of petitioner's license to specify Channel 264, as proposed in the Notice. It notes that this is not a case in which it is necessary to delete petitioner's existing channel in order to assign the proposed Class C channel.⁶ It believes that our population guidelines should not be a bar to the addition of a third channel to Cheyenne in light of an unofficial population esti-

¹ KVWO, Inc., operates KVWO(AM) and KVWO-FM; Frontier Broadcasting Co. is licensed for KFBC(AM) and KFBC-FM; Rumberger Enterprises, Inc. operates full-time AM Station KNIE.

² See Paragraph 4 of the further notice of proposed rule making in Docket No. 14185 in paragraph 25 of the Third Report, Memorandum (FCC 62-867) and incorporated by reference in the Order and Opinion, 40 F.C.C. 747, 758 (1963).

³ Sheridan (pop. 16,800) and Rock Springs (pop. 14,200).

⁴ See note 16, infra.

¹ By Order adopted April 27, 1976, the license of Station KNIE was assigned to Dencolo Broadcasting, Inc. (File No. BAL-8616).

² All population figures are taken from the 1970 U.S. Census, unless otherwise stated.

³ See 41 FR 15907, April 15, 1976.

mate of 54,000 people as of 1975, as determined by the Cheyenne Chamber of Commerce. It also urges that we consider Cheyenne's dominant position in the state as the capital and largest city. Rumberger specifically represents that it would apply for any FM channel which is made available as a result of this proceeding. As to petitioner's requested modification, Rumberger notes that deletion of petitioner's channel of operation is not technically required and that the public interest consideration of continuing and existing service is overcome by the need to open a new channel assignment to competing applicants. The petitioner should not, in Rumberger's opinion, be entitled to a protected status by merely being the first to petition that an additional Class C channel be assigned to Cheyenne. Rumberger further avers that petitioner's effort to modify its present license to specify the only Class C channel available for assignment to Cheyenne is an attempt to freeze out competition.

5. In reply comments, petitioner maintains that its license should be modified as originally requested, but that if such modification is not granted then it requests that no changes in the FM Table of Assignments regarding Cheyenne be adopted. It alleges that the population criteria do not, at present, permit three channels and that although Cheyenne has experienced a rapid growth rate the last few years, the 1970 Census figure represents a 6 percent decline in population since the 1960 Census. Petitioner calls our attention to several cases in which we have declined to make an exception to our population criteria. In addition, it claims that our policy against intermixture would be fostered by adopting the proposal set forth in the Notice. Modification of its license, according to petitioner, will eliminate the technical and competitive disparities between the two existing FM licensees. It also argues that the equities are in its favor because it did the engineering work involved in discovering the availability of a Class C channel and that it has upgraded service on its station since taking over from a nearby bankrupt licensee several years ago. Finally, we are told that "[t]he Commission has the inherent power to modify a station's license to require operation on a new channel without first holding a hearing or entering into sections 308 and 309 of the Communications Act considerations." Section 316 (a) of the Act, it is alleged, gives the Commission this modification power "without preliminary recourse to the normal hearing procedures since a licensee has no proprietary right in a particular frequency." In petitioner's opinion, this procedure would obviate the need for any potentially lengthy and time-consuming hearings.

6. In reply comments (received the same day as petitioner's reply comments), KRAE, Inc., argues that the Ashbacker doctrine⁸ requires compara-

tive consideration of all qualified applicants for the new frequency. It alleges that by adopting the counterproposal, no party will be prejudiced and the public interest will be served by full comparative consideration of all qualified applicants.

7. After careful and extensive review of the Ashbacker doctrine and other issues in this case, the Commission believes that the counterproposal represents the more prudent resolution of the relevant public interest considerations involved. For reasons stated below, we believe the public interest will be best served by retaining Channel 292A at Cheyenne, assigning Channel 264 as a third channel there, and by denying petitioner's request for modification of its present license to specify operation on Channel 264. Consequently, we also deny petitioner's alternative request to make no changes in the Table of Assignments for Cheyenne.

8. First we shall consider the arguments advanced concerning our population criteria and our policy against intermixture. We have often said that our population criteria are "a guide and not an immutable standard"⁹ and are only one of many considerations to be weighed in making "a fair, efficient and equitable" distribution of FM assignments under Section 307(b) of the Communications Act of 1934, as amended.¹⁰ More important is the future availability of FM channels for assignment in the particular area and the demand therefor.¹¹ Demand is an important consideration in this case, because if we adopt the counterproposal, we would subject the Class A operation to competition with two Class C operations. Both KRAE, Inc., and Rumberger Enterprises, Inc., have expressed interest in operating the Class A frequency should they fail to obtain the Class C channel adopted herein. Cheyenne is, as previously stated, the most populous city in Wyoming and the capital city of the state. Further, the Cheyenne Department of Model Cities forecasts a 1985 population of 60,000, according to petitioner's exhibit. Indeed, it would be futile to wait until the 1980 Census figures are published before we could justify the addition of a third channel to a community that is so close to the incremental figure. Thus, in view of the availability of another FM channel, the expressed interest in a third FM channel, the important position occupied by Cheyenne in the state and the population figures estimated for Cheyenne, the addition of a third FM channel is warranted.

9. Regarding our policy against intermixture, we have previously stated that a deviation from that policy is justified where a demand for the Class A channel is present and where a showing has been

made that a Class A channel could compete with a Class C channel (or at least, a showing has been made that someone is willing to undertake the use of the Class A channel).¹² KRAE, Inc. and Rumberger Enterprises, Inc. have both expressed an interest in operating the Class A channel should they fail to obtain the new Class C channel or should petitioner lose interest in continuing its present Class A station. There has been no evidence presented that the Class A channel could not continue to compete effectively with the two Class C channels. Moreover, as KRAE, Inc. points out, there is already intermixture of the existing Class A and Class C operations in Cheyenne. In addition, it appears that no additional Class C channels are available for assignment to Cheyenne to permit us to replace the Class A channel. Finally, the diversity of programming that would result from the operation of three stations rather than two stations is an important public interest consideration. Thus, we believe that intermixture of classes of channels in Cheyenne would not result in an undesirable situation and we shall retain the existing Class A assignment at Cheyenne.¹³

10. The issue has been raised whether an existing licensee is entitled to a modification of its license, upon request, to specify operation on a newly assigned frequency of a superior class of channel in the same community where the existing licensee's channel of operation is not deleted and other parties desire to apply for the new assignment. A modification may be issued either (1) by virtue of Commission Order under section 316(a) of the Communications Act of 1934, as amended, if the Commission finds, after affording the licensee notification of the proposed action and an opportunity to be heard, that the public interest, convenience, and necessity will be promoted thereby, or (2) by grant of an application filed by the licensee, pursuant to section 309(a) of the Communications Act, under the same public interest determination. In this case, petitioner does not have a right to a section 316(a) modification because under that provision the exercise of the Commission's power to modify is independent of the licensee's wishes.¹⁴ We have already determined that the public interest would be served by retaining the Class A channel on which petitioner operates. By granting petitioner's request we would be effectively foreclosing the filing of other applications by interested persons for the newly assigned channel after the effective date of the modifica-

⁸ See Yakima, Wash., 42 F.C.C. 2d 548, 550 (1973) and cases cited therein.

⁹ See Delta Television, Inc., 11 R.R. 1559 (1954); WBUF-TV, Inc., 12 R.R. 218(a) (1955); Albany-Schenectady-Troy, New York, 23 F.C.C. 358 (1957).

¹⁰ See Peoples Broadcasting Co. v. U.S., 209 F. 2d 286 (D.C. Cir. 1953). "The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license." F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470 (1940). See also section 304 of the Communications Act of 1934, as amended.

⁸ Ashbacker Radio Corporation v. F.C.C., 326 U.S. 327 (1945).

⁹ Fresno, Cal., 38 F.C.C. 2d 525, 526 (1972); Colorado Springs, Colo., 44 F.C.C. 2d 1047, 1054 (1974); Rapid City, S.D., 50 F.C.C. 2d 997, 999-1000 (1975).

¹⁰ Colorado Springs, Colo., 44 F.C.C. 2d 1047, 1054 (1974).

¹¹ Yakima, Wash., 42 F.C.C. 2d 548, 549 (1973).

tion. In "Ashbacker Radio Corp. v. F.C.C.", 326 U.S. 327 (1945), the Supreme Court decided that the Commission could not grant the application of one party for a new frequency without first giving comparative consideration to other mutually exclusive applications filed therewith. Without a hearing in which all mutually exclusive applications are given comparative analysis, the Commission could not make the public interest finding as to which applicant was the best qualified to render service in the public interest.¹⁵ We do not wish to cut off the rights of other interested parties who might want to apply for the new channel. It is our policy in these cases where a modification is requested from a Class A channel to a Class C (or Class B) channel to deny modification if any other person expresses a desire to apply for the newly assigned channel.¹⁶ We believe that the public interest would be best served by affording other interested persons an equal opportunity to file an application and to be given consideration for the new channel.¹⁷ This procedure is designed to enable us to more effectively exercise our section 316(a) authority to modify. By requiring all persons who may wish to apply for a newly assigned channel to make that desire known and to state why we should not grant a requested modification, we can make a more informed judgment. On the other hand, if we merely denied modification and ordered that an application under section 309(a) be filed in the belief that some other person, unknown to us, may be waiting for a channel to be assigned before filing an application, we might be subjecting a licensee who is seeking modification needless delay and expense. However, in this case, all interested parties did come forward and properly announce in comments their desire to apply for the newly assigned channel. Petitioner has not adequately demonstrated that it should be favored or protected against other interested parties. Therefore, its request for modification is denied and it or any other interested party should file an application pursuant to

section 309(a) for use of Channel 264 if it desires to operate on that frequency.¹⁸

11. Regarding the technical feasibility of the assignment of Channel 264 to Cheyenne, it will be necessary, as stated before, to substitute Channel 280A for unoccupied Channel 265A at Terrytown, Nebraska. In addition, the transmitter site for a Channel 264 operation at Cheyenne must be located at least 5 miles west of the community in order to meet the Commission's spacing requirements with respect to Channel 261A at Kimball, Nebraska.

12. Preclusion will occur on Channels 261A, 263, 264 and 265A as a result of assigning Channel 264 to Cheyenne. The precluded areas on Channel 263, 264 and 265A are essentially identical and contain a number of unoccupied assignments. In addition, only two communities, Wheatland and Torrington, Wyoming, would be affected on Channel 261A. However, both cities have unoccupied assignments. Thus, the adverse effects on the future availability of channels in the precluded areas are insignificant.

13. Accordingly, pursuant to authority contained in sections 4(i), 303 and 307 (b) of the Communications Act of 1934, as amended: *It is ordered*, That effective December 10, 1976, the FM Table of Assignments § 73.202(b) of the Commission's rules and regulations is amended as follows for the communities listed:

City: Cheyenne, Wyoming, channel No. 250, 264, 292A; and Terrytown, Nebraska, channel No. 280A.

14. *It is further ordered*, That the petition of KVWO, Inc., insofar as it requests the modification of its license to specify Channel 264 in lieu of Channel 292A and the deletion of Channel 292A at Cheyenne is denied.

15. *It is further ordered*, That the counterproposal of KRAE, Inc. is granted.

16. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS
COMMISSION,¹⁹

VINCENT J. MULLINS,
Secretary.

[FR Doc. 76-32755 Filed 11-5-76; 8:45 am]

[Docket No. 20422; FCC 76-1003]

PART 73—RADIO BROADCAST SERVICES FM Broadcast Stations in Certain Cities in Florida

Adopted: October 27, 1976.

Released: November 5, 1976.

Report and order—Proceeding Terminated.

¹⁸ Perhaps if this were a case in which a channel of operation was deleted for technical reasons or otherwise in order to assign another channel, other considerations would be presented. See, for example, Endicott, N.Y., 51 F.C.C. 2d 50 (1975).

¹⁹ Commissioner Lee absent; Commissioner White not participating.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Fort Walton Beach, Crestview and Destin, Florida), Docket No. 20422, RM-2395, RM-2471, RM-2421, RM-2503, RM-2451.

1. The Commission herein considers its notice of proposed rulemaking¹ issued in response to the filing with the Commission of five petitions for rulemaking, each of which is explained below:

(a) White Sands Broadcasting ("White Sands") requested the assignment of Channel 221A to Fort Walton Beach, Florida, as a second FM assignment to the community (RM-2395);

(b) Dr. John Matkowski ("Matkowski") sought the assignment of Channel 243 to Destin, Florida, a small, unincorporated community located six miles east of Fort Walton Beach. The requested assignment would provide Destin with its first local aural service (RM-2421);

(c) Vacationland Broadcasting Co. ("Vacationland"), licensee of daytime-only AM Station WFTW and FM Station WFTW-FM, Channel 257A, Fort Walton Beach, requested the assignment of Channel 243 to Fort Walton Beach, asserting that it will relinquish its present use of Channel 257A in favor of operation on Channel 243 (RM-2457);²

(d) Holley A. Rodgers ("Rodgers") also sought the assignment of Channel 243 to Fort Walton Beach, and, like Vacationland, says it will seek broadcast authority should the channel be assigned (RM-2471);

(e) Crestview Broadcasting Co. ("CBC"), licensee of AM Station WJSB, Crestview, and FM Station WAAZ-FM, Channel 285A, also at Crestview, petitioned the Commission to assign Channel 243 to Crestview, asserting that if the assignment is made it will file an application to modify its present facilities from Channel 285A to Channel 243 (RM-2503).

2. Opposition pleadings in response to the petitions seeking the assignment of Channel 243 to Fort Walton Beach were filed by Deltona Broadcasting Co. ("Deltona"), licensee of WPAP-FM, Channel 223, Panama City, Florida, and by Janus Broadcasting Co. ("Janus"), licensee of WCNE and WCNE-FM, Channel 253, Panama City, Florida. Comments in support of the Channel 243 assignment at Fort Walton Beach were received from the Greater Fort Walton Beach Chamber of Commerce, while the South Walton County Lions Club filed comments in support of the proposal to assign Channel 243 to Destin. All petitioning parties filed supplemental pleadings. The proposals to assign Channel 243 to Fort Walton Beach, to Destin, or to Crestview are mutually exclusive since, under the Commission's mileage separation requirements, assignment to one of the three proposed communities would bar use of the channel at the two remaining communities.³

¹ 40 FR 17598, April 21, 1975; 40 FR 24031, June 4, 1975.

² Vacationland suggested that with the assignment of Channel 243, Channel 257A could be deleted from Fort Walton Beach and reassigned to Destin.

³ Section 73.207(a) of the Commission's rules requires a minimum mileage separation of 180 miles between co-channel Class C FM stations.

¹⁵ See Peoples Broadcasting Co. v. U.S., supra. "The basic teaching of the Ashbacker case is that comparative consideration by the Commission and competition between the applicants is the process most likely to serve the public." Community Broadcasting Co. v. F.C.C., 274 F. 2d 753, 759 (D.C. Cir. 1960).

¹⁶ Compare Crestview and Fort Walton Beach, Fla., F.C.C. 2d (1976) and Mitchell, South Dakota, F.C.C. 2d (1976).

¹⁷ There are analogous Commission precedents worthy of mention. E.g. in WBUF-TV, Inc., 12 R.R. 218(a) (1955), the Commission refused to issue a show cause order to modify the license of a UHF licensee to specify operation on a VHF channel because, by taking such action, interested persons who would otherwise wish to apply for the VHF channel would be unable to do so. See also Albany-Schenectady-Troy, N.Y., 23 F.C.C. 358 (1957); Elmira, N.Y., 13 R.R. 1536 (1956); Delta Television, Inc., 11 R.R. 1559 (1954).