

Omnibus Budget Reconciliation Act of 1993 ("OBRA-93"), the National Telecommunications and Information Administration ("NTIA") identified the 3650-3700 MHz portion of this band for transfer, effective January 1999, from a Government/non-Government shared use status to a mixed-use status. A condition of the transfer allows Government radiolocation stations to continue to operate indefinitely in the 3650 MHz band at three locations with a "radius of operation" of 80 kilometers (49.7 miles).

11. Unlicensed operation in the 3650 MHz band, which is part of the 3600-4400 MHz band used for Federal Government and satellite operations, has been prohibited. However, the change in allocation status of the 3650 MHz band from Government/non-Government shared use to mixed use provides an opportunity for us to revisit this prohibition. The 3650 MHz band appears to be well suited for unlicensed operations for a number of reasons. First, it is a contiguous 50 MHz block of spectrum, so there is sufficient spectrum available to permit wide bandwidth applications such as high speed data transmissions. Also, it is not heavily used in most parts of the country because it is recently vacated government spectrum, and no licenses have been issued for new non-government services in the band. The only operations in this band that need to be protected from interference at this time are the FSS sites and three grandfathered government sites, and these are fixed operations at known geographic coordinates, making it easier to avoid interference to them. Given that the proposed terrestrial uses of this band involve operations from fixed sites, it would appear that unlicensed operations could be compatible with future licensed uses. For these reasons, it may be possible to permit unlicensed devices to operate in this band with minimal restrictions except those necessary to avoid interference to licensed users in the band. For example, it may be possible to permit wideband operation with high gain antennas at power levels greater than the 1 watt maximum permitted for other unlicensed devices. If unlicensed devices are permitted to operate in this band, they may have to have capabilities such as frequency agility to avoid causing interference to any fixed service operations licensed in the band.

12. Allowing unlicensed operation with very minimal technical requirements could potentially permit the development of new and innovative types of unlicensed devices that could not be operated under the current rules.

Higher power limits and high gain antennas would substantially increase the operational range of devices and could permit the development of new types of wireless data networks. We seek comment on the following questions concerning permitting unlicensed operation in the 3650 MHz band with minimal requirements.

- What are the potential benefits and drawbacks of permitting unlicensed operation in this band subject to only the minimum rules necessary to avoid interference to licensed users?
- Is it viable to license fixed operations in this spectrum as proposed and permit operation of part 15 devices in unused portions on a non-interference basis?
- Could power levels greater than 1 watt be permitted for such operations without causing interference to authorized users within the band? If so, what is the maximum power level that could be permitted? Would any restrictions on antenna gain or directivity be necessary?
- What other requirements are necessary to protect FSS and Federal Government operations in the 3650 MHz band from interference? Are geographic restrictions on where an unlicensed device could operate necessary, and how could these be enforced? Could GPS be incorporated into a device so it could determine its precise location and distance from licensed users? Would such an approach be necessary or reliable?
- What other requirements would be necessary to prevent interference to other authorized services, such as out-of-band emission limits? What types of licensed services could share the 3650 MHz band with unlicensed devices?
- Is it necessary to establish any standards to allow sharing between unlicensed users of the 3650 MHz band? If so, how do we arrive at standards?
- Are there any other bands where unlicensed operation with minimal rules could be permitted without causing interference to authorized services? What other bands should we consider? What are the advantages of each?

#### Ordering Clause

13. Pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this Notice of Inquiry *is hereby adopted*.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03-1206 Filed 1-17-03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3568; MB Docket No. 02-387; RM-10623]

### Radio Broadcasting Services; Lahaina and Waianae, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Pacific Radio Group, licensee of Station KLHI(FM), Channel 266C, Lahaina, Hawaii. The petition proposes to change Station KLHI(FM)'s community of license from Lahaina to Waianae, Hawaii and provide Waianae with its first local aural transmission service. The coordinates for requested Channel 266C at Waianae, Hawaii are 21-23-51 NL and 158-06-01 WL, with a site restriction of 10.7 kilometers (6.6 miles) southeast of Waianae.

Petitioner's reallocation proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 266C at Waianae, Hawaii or require the petitioner to demonstrate the availability of an additional equivalent class channel.

**DATES:** Comments must be filed on or before February 14, 2003, and reply comments on or before March 3, 2003.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Mark N. Lipp, Esq. and J. Thomas Nolan, Esq., Shook, Hardy & Bacon, LLP.; 600 14th Street, NW., Suite 800; Washington, DC 20005-2004.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-387, adopted December 20, 2002, and released December 24, 2002. The full text of this Commission decision is available for inspection and copying

during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Waianae, Channel 266C, and removing Channel 266C1 at Lahaina.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division Media Bureau.*

[FR Doc. 03-1200 Filed 1-17-03; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 02-3065; MB Docket No. 02-349, RM-10599; MB Docket No. 02-350, RM-10600]

##### Radio Broadcasting Services; Encinal and Sheffield, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes two allotments in Encinal and Sheffield, TX. The Commission requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 286A at Encinal, Texas, as potentially the community's third local aural broadcast service. Channel 286A can be allotted to Encinal in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 km (3.9 miles) north of Encinal. The coordinates for Channel 286A at Encinal are 28-05-37 North Latitude and 99-20-25 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border. See **SUPPLEMENTARY INFORMATION** *infra*.

**DATES:** Comments must be filed on or before February 24, 2003, and reply comments on or before March 11, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos 02-349 and 02-350; adopted November 6, 2002 and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202)863-2893.

The Commission further requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 224C2 at Sheffield, Texas, as the community's first local FM transmission service. Channel 224C2 can be allotted to Sheffield in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 km (9.8 miles) south of Sheffield. The coordinates for Channel 224C2 at Sheffield are 30-33-15 North Latitude and 101-52-09 West Longitude. The proposed allotment will require concurrence by Mexico because it is

located within 320 kilometers (199 miles) of the Mexican border.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 286A at Encinal and by adding Sheffield, Channel 224C2.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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#### DEPARTMENT OF TRANSPORTATION

##### Research and Special Programs Administration

##### 49 CFR Parts 171, 172, 173, 177, 178, 179 and 180

[Docket No. RSPA-02-13773 (HM-218B)]

RIN 2137-AD73

##### Hazardous Materials; Miscellaneous Amendments

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations based on petitions for rulemaking and RSPA