

- (1) The appeal is frivolous;  
 (2) The appeal was filed late;  
 (3) The errors are not clearly and concisely stated;  
 (4) The issues are immaterial; or  
 (5) The issues have been previously adjudicated in an appeal involving the same grazing preference, the same parties, or their predecessors in interest.
- (c) The State Director must send a copy of the motion to the appellant.
- (d) The appellant may file a written answer with the State Director within 30 days after receiving the motion to dismiss.

(e) The State Director will transmit the appeal, any petition or request, motion to dismiss, and answer, along with the administrative record, to the Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(f) An administrative law judge will rule on the motion to dismiss and, if the motion is sustained, dismiss the appeal by written order.

8. In newly redesignated § 4.474, add paragraph (c) to read as follows:

**§ 4.474 Authority of administrative law judge.**

\* \* \* \* \*

(c) The administrative law judge may consider and rule on all motions and petitions, including:

(1) A petition for a stay of a final grazing decision of the BLM field office; and

(2) A request that a final grazing decision of the BLM field office become effective immediately.

9. Revise newly redesignated § 4.478 to read as follows:

**§ 4.478 Appeals to the Board of Land Appeals.**

(a) A person who has a right of appeal under § 4.410 or other applicable regulation may appeal under § 4.24(c) an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a final grazing decision effective immediately.

(b) Any party affected by the administrative law judge's decision on the merits, including the State Director, has the right to appeal to the Board of Land Appeals under the procedures in this part.

10. Revise newly redesignated § 4.479 to read as follows:

**§ 4.479 Effect of decision during appeal.**

(a) A BLM decision may provide that the decision will be effective

immediately pending decision on an appeal from the BLM decision. This paragraph applies:

(1) Notwithstanding the provisions of § 4.22(b) pertaining to the period during which a final decision will not be in effect; and

(2) Consistent with the provisions of § 4160.3.

(b) An administrative law judge or the Board may change or revoke any action that BLM takes pursuant to a BLM decision on appeal.

(c) This paragraph applies to any BLM decision that, at the time it is made, is subject to appeal before a superior authority in the Department. In order to ensure the exhaustion of administrative remedies before resort to court action, the BLM decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless the BLM decision has become effective under this section or § 4.22.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 03-1473, MB Docket No. 03-111, RM-10701]

**Radio Broadcasting Services; Kernville, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Linda A. Davidson proposing the allotment of Channel 289A at Kernville, CA, as that community's second local service. Channel 289A can be allotted to Kernville, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction of 5.6 kilometers (3.5 miles) northeast of the community. The reference coordinates for Channel 289A at Kernville are 35-46-29 North Latitude and 118-22-09 West Longitude.

**DATES:** Comments must be filed on or before June 26, 2003, and reply comments on or before July 11, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda A.

Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-111, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, 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).

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* contact.

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 California, is amended by adding Channel 289A at Kernville.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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