

FCC MAIL SECTION

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

SEP 21 2 23 PM '92

MM Docket No. 92-196

In the Matter of

Amendment of Section 73.202(b), RM-8041 Table of Allotments, FM Broadcast Stations. (Tallassee and Tuskegee, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 10, 1992; Released: September 21, 1992

Comment Date: November 12, 1992 Reply Comment Date: November 27, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Tiger Broadcasting Company, Inc. ("petitioner"), permittee of Station WACQ-FM, Channel 260A, Tuskegee, Alabama, requesting the reallocation of its channel to Tallassee, Alabama, and modification of its permit accordingly. Petitioner stated its intention to promptly file an application for Channel 260A if reallocated to Tallassee, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. In this regard, petitioner advises that the requested reallocation of Channel 260A to Tallassee is mutually exclusive with its current use at Tuskegee, since it does not intend to relocate from its present transmitter site. According to petitioner, Station WACQ-FM currently provides a 70 dBu signal over the entire community of Tallassee from its current site. Moreover, petitioner adds that Tuskegee (population 12,257)¹ has two FM stations whereas Tallassee (population 5,112) has none. Additionally, while Tuskegee is served locally by full-time Station WBIL(AM), petitioner advises that Tallassee is provided local service by Station WTLS(AM), which operates daytime only. Therefore, petitioner advises that its proposal would bring a first local FM transmission service, as well as a first fulltime aural transmission service, to Tallassee, and would not deprive Tuskegee of local transmission service.² In further support of its proposal, petitioner states that neither Tuskegee nor Tallassee are located within an urbanized area, and therefore the requested reallocation would not result in the shift of its station from a rural to an urban area.

3. A staff engineering analysis reveals that Channel 260A can be allotted to Tallassee in conformity with the minimum distance separation requirements of Section 73.202(b)(1) of the Commission's Rules.³

4. We believe the public interest would be served by proposing to reallocate Channel 260A from Tuskegee to Tallassee, Alabama, as requested. Therefore, we shall propose to modify Station WACQ-FM to specify Tallassee as its community of license on Channel 260A. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 260A at Tallassee or require the petitioner to demonstrate the availability of an additional equivalent class channel at Tallassee.

5. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

Table with 3 columns: City, Present, Proposed Channel No. Rows include Tallassee, Alabama and Tuskegee, Alabama.

6. 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.

7. Interested parties may file comments on or before November 12, 1992, and reply comments on or before November 27, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

M. Scott Johnson, Esq. Catherine M. Withers, Esq. Gardner, Carton & Douglas 1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005

8. 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.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. 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

1 Population figures were taken from the 1990 U.S. Census. 2 Station WBIL-FM, Channel 240A, is licensed to Tuskegee.

3 Coordinates used in this determination are those at the authorized site of Station WACQ-FM at 32-26-30 and 85-47-45.

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 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

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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 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(s) 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(s) 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.)

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 Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.