

FCC MAIL SECTION

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

SEP 28 4 41 PM '92

MM Docket No. 92-217 ✓

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8069
Table of Allotments,
FM Broadcast Stations.
(Camden, East Camden and Stamps,
Arkansas; Minden, Louisiana)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: September 1, 1992; Released: September 28, 1992

Comment Date: November 19, 1992

Reply Comment Date: December 4, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Y95 Radio ("petitioner"), licensee of Station KCXY(FM), Channel 237A, Camden, Arkansas, requesting the substitution of Channel 237C1 for Channel 237A at Camden, the reallocation of Channel 237C1 to East Camden, Arkansas, and modification of the license for Station KCXY(FM) accordingly. In order to accommodate the allotment at East Camden, petitioner also requests the substitution of Channel 282A for vacant but applied for Channel 238A at Stamps, Arkansas,¹ as well as the substitution of Channel 239A for Channel 237A at Minden, Louisiana, and modification of the license for Station KASO-FM, Channel 237A. Petitioner stated its intention to apply for Channel 237C1 if allotted to East Camden, as requested. Additionally, petitioner stated its willingness to reimburse the licensee of Station KASO-FM for its reasonable costs associated with the frequency change.

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 change to East Camden, the location of its present transmitter site, is mutually exclusive with the allotment of Channel 237A at Camden,

and that it does not intend to move from its authorized site.² As a result, Camden will continue to receive aural transmission service from Station KCXY(FM). In further support of its proposal, petitioner advises that East Camden (population 632),³ is an incorporated community, which has its own local government, numerous businesses and other attributes of a community including banking facilities and a post office. Furthermore, petitioner advises that in addition to its Station KCXY(FM), Camden (population 15,356) also receives local service from Station KWEH(FM), Channel 246C2, and potential service from Channel 283A, vacant but applied for,⁴ as well as service from full time Stations KAMD(AM) and KJWH(AM). Conversely, East Camden has no local aural transmission service. Petitioner submits that adoption of its proposal would provide an expanded service to 166,603 persons in an area of 16,374 square kilometers, representing an increase of 137,855 persons and an area of 14,791 square kilometers.

3. Petitioner asserts that additional benefits of its proposal would accrue to Stamps, Arkansas, and Minden, Louisiana, to the extent it would provide Stamps with a 6 kilowatt Class A allotment, and would provide Station KASO-FM the opportunity to operate at maximum Class A facilities, advantages which are not presently available to either community.

4. We believe the proposal warrants further consideration since it could provide East Camden with its first local aural transmission service. As noted above, Camden will not be deprived of local aural transmission service. Further, neither Camden nor East Camden are located within any Urbanized Area. Finally, the requested allotment of Channel 237C1 is mutually exclusive with the present allotment of Channel 237A at Camden. However, since Station KCXY(FM) is not required to change its site in order to obtain an upgrade, we request petitioner to submit additional information concerning the public interest benefits that would accrue from the change in community.

5. Channel 237C1 can be allotted to East Camden at the presently authorized site for Station KCXY(FM)⁵ consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.⁶ Channel 282A can be substituted for Channel 238A at Stamps, Arkansas, with a site restriction 12.2 kilometers (7.6 miles)

¹ The applicant for Channel 238A at Stamps, Arkansas is Lafayette County Broadcasting, Inc. (File No. BPH-920401MB).

² Coordinates at the licensed site of Station KCXY(FM) are 33-30-14 and 92-48-38.

³ Population figure cited herein were taken from the 1990 U.S. Census.

⁴ The applicant for Channel 283A at Camden is Gary Coates (File No. BPH-881220MD).

⁵ As indicated above, coordinates used for Channel 237C1 at East Camden are 33-30-14 and 92-48-38.

⁶ The proposal for Channel 237C1 at East Camden is short

spaced to Station KMTB(FM), Channel 237A, Murfreesboro, Arkansas, at coordinates 34-05-44 and 93-41-31, and therefore dependent upon Station KMTB(FM) moving to Channel 258C3 in accordance with the modification provisions set forth in MM Docket No. 89-290. See *Report and Order* (MM Docket No. 89-290), 7 FCC Rcd _____ (adopted July 31, 1992). Since the East Camden allotment proposal is dependent upon the grant of a license for Station KMTB(FM) on Channel 258C3, the issuance of a license for Station KCXY(FM) on Channel 237C1 may be withheld until Station KMTB(FM) is authorized to operate on its new channel. The licensee of Station KMTB(FM)

west of the community.⁷ Channel 239A can be allotted to Minden, Louisiana, at the presently licensed transmitter site for Station KASO-FM.⁸

6. The petitioner's modification request at East Camden is consistent with the provisions of Section 1.420(g) and (i) of the Commission's Rules. Therefore, we shall propose to modify the license of Station KCXY(FM) without entertaining competing expressions of interest in the use of Channel 237C1 at East Camden, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to Cook Enterprises, Inc., licensee of Station KASO-FM, Minden, Louisiana, seeking comments as to why its license should not be modified to specify operation on Channel 239A in lieu of Channel 237A. Commission policy requires that Station KASO-FM be reimbursed for the reasonable costs incurred in changing frequencies. See *Circleville, OH*, 8 FCC 2d 159 (1976). Petitioner has stated its willingness to reimburse Station KASO-FM for its reasonable costs associated with moving to Channel 239A.

7. We are also serving a copy of this *Notice* on the applicant for Channel 238A at Stamps, Arkansas. In the event this proceeding is finalized prior to the issuance of a permit for Channel 238A at Stamps, the applicant may amend its application accordingly. Such amendment may be accomplished without the loss of cut off protection. See *Salamanca, NY and Bradford, PA*, 50 Fed. Reg. 26208 (1985), and *Sanibel, FL*, 50 Fed. Reg. 32706 (1985).

8. In view of the above, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Camden, Arkansas	237A, 246C2, 283A	246C2, 283A
East Camden, Arkansas	--	237C1
Stamps, Arkansas	238A, 263C2	263C2, 282A
Minden, Louisiana	237A	239A

9. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Cook Enterprises, Inc., licensee of Station KASO-FM, Channel 237A, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 239A in lieu of Channel 237A.

10. Pursuant to Section 1.87 of the Commission's Rules, Cook Enterprises, Inc. may, not later than **November 19, 1992**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Cook Enterprises, Inc. to furnish additional information. If Cook Enterprises, Inc. 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 modification for hearing. If no written statement is filed by the date referred to above, Cook Enterprises, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by Certified Mail, Return Receipt Requested, to the following:

Cook Enterprises, Inc.
P.O. Box 1240
Minden, LA 71055
(Licensee of Station KASO-FM)

Lafayette County Broadcasting, Inc.
Rte. 1, Box 179
Stamps, AR 71860
(Applicant - Stamps, AR)

Mediatronics Broadcasting, Inc.
P.O. Box 907
Murfreesboro, AR 71958
(Licensee of Station KMTB(FM))

12. 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.

13. Interested parties may file comments on or before **November 19, 1992**, and reply comments on or before **December 4, 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 petitioners, or their counsel or consultant, as follows:

Mark E. Fields, Esq.
Law Office of Mark E. Fields
1825 I Street, N.W.
Suite 400
Washington, D.C. 20006

14. 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*

will be served with a copy of this *Order*.

⁷ Coordinates used for Channel 282A at Stamps are 33-23-20 and 93-37-38. The site restriction is required to avoid short spacing to Channel 283A, Camden, Arkansas, at coordinates 33-35-06 and 92-50-00, and to the licensed site for Station

KJLO-FM, Channel 281C, Monroe, Louisiana, at coordinates 32-39-36 and 92-05-15.

⁸ Coordinates for Channel 239A at Minden are 32-37-50 and 93-16-56.

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.

15. 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 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.