

FCC MAIL SECTION

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

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MM Docket No. 92-225 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8073
Table of Allotments,
FM Broadcast Stations.
(Northport, Alabama and
Macon, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1992; Released: October 2, 1992

Comment Date: November 23, 1992

Reply Comment Date: December 8, 1992

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by Warrior Broadcasting, Inc. ("petitioner"), licensee of Station WLXY(FM), Channel 264A, Northport, Alabama, requesting the substitution of Channel 264C3 for Channel 264A at Northport and modification of its license accordingly to specify operation on the higher powered channel. Additionally, in order to accommodate the proposal in conformity with minimum distance separation requirements, petitioner requests the deletion of vacant Channel 263A at Macon, Mississippi,¹ or alternatively, the placement of a site restriction on the existing Macon allotment. Petitioner stated its intention to apply for Channel 264C3, if allotted to Northport, as requested.²

2. A staff engineering analysis has determined that Channel 264C3 can be allotted to Northport, Alabama, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site located 15.2 kilometers (9.4 miles) west of the community,³ provided

that vacant Channel 263A is site restricted 10 kilometers (6.2 miles) west of Macon.⁴ Petitioner should provide a reasonable assurance that a transmitter site conforming to the site restriction is available at Macon. See *Cave City and Radcliff, Kentucky, and Santa Claus, Indiana*, 7 FCC Rcd 1363 (1992). We will delete the Macon channel if no expression of interest in retaining the channel is filed.

3. We believe the public interest would be served by consideration of petitioner's proposal since it could provide Northport with a wide coverage area FM service. Therefore, we shall propose to modify the license for Station WLSY(FM) as requested. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 264C3 at Northport, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the above, the Commission believes it is appropriate to solicit 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:

OPTION I

City	Channel No.	
	Present	Proposed
Northport, Alabama	264A	264C3
Macon, Mississippi	263A	--

OPTION II

Northport, Alabama	264A	264C3
Macon, Mississippi	263A	263A

5. 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.

6. Interested parties may file comments on or before **November 23, 1992**, and reply comments on or before **December 8, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with

¹ Petitioner states that Channel 263A was allotted to Macon, Mississippi, in MM Docket No. 85-263. See *Report and Order* (MM Docket 85-263), 51 Fed. Reg. 23763, July 1, 1986. An application for Channel 263A was granted on March 2, 1987. However, after several extensions and an assignment of the permit were granted, the station remained unbuilt. Ultimately, the construction permit issued to WMXG, Inc. (File No. BPH-890531JJ) was forfeited and cancelled by letter on June 23, 1992. WMXG, Inc. did not request reconsideration, and consequently the Commission's action became final on July 23, 1992.

In the event Channel 263A is retained in Macon, a new filing window will be opened therefor upon the termination of this proceeding.

² Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of

the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Petitioner is requested to correct this omission in its comments.

³ Coordinates for Channel 264C3 at Northport are 33-16-00 and 87-44-01. The site restriction is required to avoid a short-spacing to the licensed site of Station WHMA-FM, Channel 263C, Anniston, Alabama, at reference coordinates 33-37-38 and 85-53-25.

⁴ Coordinates used for Channel 263A at Macon are 33-05-10 and 88-39-48.

the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Warrior Broadcasting, Inc.
Attn: James E. Shaw, President
3330 Main Avenue
P.O. Box 1020
Northport, Alabama 35476

7. 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.

8. 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.