DOCKET FILE ORIGINAL

FCC MAIL SECTION

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

DEC 30 3 28 PM '93

MM Docket No. 93-318

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b) RM-8364
Table of Allotments,
FM Broadcast Stations.
(Clinton, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 20, 1993; Released: December 30, 1993

Comment Date: February 22, 1994
Reply Comment Date: March 9, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Thunderbolt Broadcasting Company, Inc. ("petitioner"), proposing the allotment of Channel 271C3 to Clinton, Kentucky, as that community's first local aural transmission service. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 271C3 to Clinton, Kentucky, since it could provide the community with its first local aural transmission service. An engineering analysis has determined that Channel 271C3 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid short-spacings to Station WCMT-FM, Channel 269A, Martin, Tennessee, Station KJBR, Channel 270C, Jonesboro, Arkansas, and Station KDEX-FM, Channel 272A, Dexter, Missouri.[1]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Clinton, Kentucky		271C3

4. 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.

5. Interested parties may file comments on or before **February 22, 1994,** and reply comments on or before **March 9, 1994,** 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, or its counsel or consultant, as follows:

John F. Garziglia, Esq.
Pepper & Corazzini
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel for Petitioner)

6. IT IS ORDERED that the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Receipt Requested, to:

Purchase Broadcasting Co.
Post Office Box 387
Benton, Kentucky 42025
(Licensee of Station WCBL-FM)

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), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, 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

[1] The coordinates for channel 271C3 at Clinton are North Latitude 36-44-30 and West Longitude 88-54-30.

We note that the coordinates for Channel 271C3 at Clinton are short-spaced to Station WCBL-FM, Channel 272A, Benton, Kentucky. However, the license for Station WCBL-FM was modified to specify operation on Channel 256A in the context of MM Docket No. 88 613. *See* 4 FCC Rcd 8707 (1989). Therefore, the issuance of a license for Channel 271C3 may be withheld until Station WCBL-FM is licensed on Channel 256A. We will serve the licensee of Station WCBL-FM with a copy of this *Notice*.

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

John A. Karousos
Acting 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.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

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.