

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, D.C. 20554

APR 24 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Stamping Ground, Kentucky))

MM Docket 95-28
RM-8593

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COUNTERPROPOSAL

Mortenson Broadcasting Company of Kentucky, L.L.C. ("MBC"), licensee of daytime only AM Station WCGW, Nicholasville, Kentucky, by its counsel, hereby files a counterproposal to the Notice of Proposed Rule Making, 10 FCC Rcd 2301 (1995), proposing the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky, and the modification of the permit of Scott County Broadcasting, Inc. ("Scott"), for Station WKYI(FM). Instead, MBC proposes to allot Channel 240A to Nicholasville to provide a second FM channel. In support hereof, MBC states as follows:

1. As shown in the attached Engineering Statement of Cynthia M. Jacobson of Carl T. Jones Corporation, Channel 240A

No. of Copies rec'd 24
List A B C D E

can be allotted to Nicholasville in compliance with the minimum spacing requirements set forth in Section 73.207 of the Commission's Rules at the following reference coordinates: 37° 48' 01" NL and 84° 32' 59" WL. At this location, 9.5 km south of Nicholasville, the principal community contour will cover all of Nicholasville.

2. The Commission's allotment priorities favor a new primary service, such as the requested allotment of a second FM channel to Nicholasville over an increase in secondary service such as the proposed increase from 3 kW to 6 kW at Stamping Ground, unless the increase will include service to unserved or underserved areas. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). See e.g., Benton, Arkansas, et al., (where a second FM allotment to Homer, Louisiana, was favored over an upgrade in class of channel (A to C2) at Hampton, Arkansas. This policy of preferring a new primary service over a new secondary service (to areas already receiving two or more radio services) is well established. See also, Hormigueros, Puerto Rico, 7 FCC Rcd 3017 (1992). Scott made no attempt in its petition to demonstrate that its proposed increase in coverage would reach any unserved or underserved areas. Therefore, on the merits, Channel 240A should be allotted to Nicholasville.

3. In its petition, Scott states that "WKYI currently receives interference within its 1 mV/m protected contour from

co-channel Station WHKO, Dayton, Ohio, a Class B facility grandfathered at 325 meters HAAT with 50 kilowatts." The Commission should give no consideration to this self-serving statement because Scott knew of the existence of Station WHKO and its potential effect on WKYI not only when Scott filed its application for Channel 256A but also when (through its principal, James P. Gray) it filed the original petition for Channel 256A in 1989. See MM Docket 89-119, Notice of Proposed Rule Making, 4 FCC Rcd 4516 (1989); Report and Order, 5 FCC Rcd 1772 (1990) (a copy is enclosed). In the Report and Order in that proceeding, Mr. Gray, responding to an opposition filed by the Dayton station, certified that there were many potential sites that met the spacings in effect at that time and that Station WHKO should not receive protection as a grandfathered overpowered facility but should be evaluated with the maximum facilities set forth in Section 73.209(a). Gray also assured the Commission "that WHIO's (the Dayton licensee) argument concerning interference is simply without merit." Report and Order at paragraph 3.

4. The Commission agreed with Mr. Gray and refused to recognize WHKO's overpowered operation for purposes of determining whether the allotment spacing standards were met. See Section 73.209 of the Commission's Rules. It is disingenuous for Mr. Gray (as President of Scott County Broadcasting, Inc.) to have argued in support of the allotment of Channel 256A to Stamping Ground on the basis that there is no

merit to the alleged interference caused by WHKO when he wanted the channel allotted and to now argue that WHKO is causing interference to his station when he finds he can increase his facility on another channel.

5. The Commission did not consider the alleged interference WHKO to be a problem in allotting Channel 256A to Stamping Ground in 1990. Thus, the Commission cannot now allow Mr. Gray to use WHKO as a reason to delete Channel 256A now to "eliminate interference."

6. MBC operates a daytime only AM station in Nicholasville and desires to operate an FM station to offer its programming to the residents of Nicholasville on a full time schedule.^{1/} MBC hereby affirms that should the Commission allot Channel 240A to Nicholasville, MBC will file an application and if granted, will construct the facility.

7. Accordingly, MBC urges the Commission to allot Channel 240A to Nicholasville, Kentucky, as its second FM channel rather

^{1/} The Commission has long recognized the desirability of allocating FM channels to communities with daytime only AM stations. See Implementation of BC Docket 80-90, MM Docket 84-231, Second Report and Order, 50 FR 15558 (1985). In that proceeding the Commission also accorded a preference to daytime AM licensees who apply for an FM channel in their community under certain prerequisites.

than allot Channel 241A as a substitute for Channel 256A at
Stamping Ground, Kentucky.

Respectfully submitted

**MORTENSON BROADCASTING COMPANY
OF KENTUCKY, L.L.C.**

By: Mark N. Lipp
Mark N. Lipp

Mullin, Rhyne, Emmons and Topel, P.C.
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Its Counsel

April 24, 1995

CARL T. JONES
CORPORATION

STATEMENT OF CYNTHIA M. JACOBSON
IN SUPPORT OF A
COUNTERPROPOSAL TO A
NOTICE OF PROPOSED RULEMAKING
MM DOCKET NO. 95-28
REQUESTING AMENDMENT OF SECTION 73.202(b)
OF THE RULES AND REGULATIONS

Proponent: Mortenson Broadcasting Company of Kentucky, L.L.C.

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. This office has been authorized by Mortenson Broadcasting Company of Kentucky, L.L.C. to prepare comments in response to a Notice of Proposed Rulemaking (NPRM) in MM Docket No. 95-28.

The NPRM proposes amendment of Section 73.202(b) of the Rules and Regulations (Table of FM Allotments) in the following manner:

<u>CITY</u>	<u>ADD</u>	<u>DELETE</u>
Stamping Ground, KY	241A	256A

The Commission issued this Notice of Proposed Rulemaking in response to a petition filed by Scott County Broadcasting, Inc. ("Scott"), licensee of Radio Station WKYI(FM), to substitute Channel 241A for Channel 256A at Stamping Ground, Kentucky. Scott also requested that WKYI(FM) be modified for operation on Channel 241A where the station can increase power to six kilowatts and eliminate interference within its protected contour.

STATEMENT OF CYNTHIA M. JACOBSON
PAGE 2

Section 73.209(a) states: "Permittees and licensees of FM broadcast stations are not protected from any interference which may be caused by the grant of a new station or authority to modify the facilities of an existing station...". FM broadcast stations are protected from interference based on distance separation requirements, and it was under this premise that Channel 256A was allotted to Stamping Ground, Kentucky¹.

Mortenson Broadcasting Company of Kentucky, L.L.C. herein requests a "counterproposal" to the above described change. It is requested that the Commission amend the FM Table of Allotments as follows:

<u>CITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Nicholasville, KY	273A	240A, 273A

This amendment of the Table of FM Allotments will provide Nicholasville, Kentucky, with its second local FM broadcast facility². Since the allotment of Channel 240A to Nicholasville, Kentucky, would conflict with the proposed channel change of Stamping Ground, Kentucky, from Channel 256A to Channel 241A, the proposal herein must be considered a counterproposal in MM Docket No. 95-28. This counterproposal provides

¹The allotment of Channel 256A to Stamping Ground, Kentucky, was processed under the "old" separation requirements (filed prior to October 2, 1989) in MM Docket No. 89-119.

²WLRO(FM), Nicholasville, Kentucky, is licensed to operate on Channel 273A with an ERP of 2.0 kW and an HAAT of 122 meters.

STATEMENT OF CYNTHIA M. JACOBSON
PAGE 3

a new FM service to a much larger community and efficient use of the broadcast spectrum, and thus it is in the public interest.

A complete frequency allocation study for the proposed allotment at Nicholasville, Kentucky, on Channel 240A was conducted, and the Channel 240A allotment is compliant with all required distance separations assuming a Channel 256A allocation for WKYI(FM). For purposes of this rulemaking, the following reference coordinates were selected for the Nicholasville, Kentucky, Channel 240A allotment:

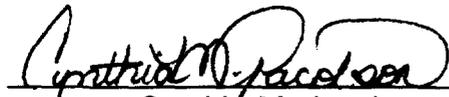
N.L. 37° 48' 01"
W.L. 84° 32' 59"

It should be noted that the reference site complies with the Commission's site suitability criteria.

The reference coordinates are located approximately 9.5 kilometers south - southeast of the center of Nicholasville, Kentucky, the principal community to be served. The proposed Class A facility is assumed to operate with the maximum allowable effective radiated power (ERP) of 6 kilowatts and antenna height above average terrain (HAAT) of 100. The community of Nicholasville will be fully encompassed by the proposed facility's 3.16 mV/m (70 dBu) coverage contour; see Exhibit 1.

The above statement and supporting exhibits were prepared by me or under my direct supervision and are believed to be true and correct.

DATED: April 20, 1995


Cynthia M. Jacobson

Study Name: new Date: 4/19/1995 Time: 16:24 Page: 1
 nichlsvle , ky Date of Data Base: 3/30/95
 ZONE 2
 Channel: 240A Section 73.207 Specings Used
 Latitude: 37 48 1
 Longitude: 84 32 59
 Translators Not Included
 Nearest FDB Station or Quiet Zone: Radio Research, WV 356.67 Km 88.8 Deg.
 Mexican Border: 1772.68 km 225.3 Deg.
 Canadian Border: 459.42 Km 19.6 Deg.

SER	CHAN	CALL	CITY AND STATE	LATITUDE	LONGITUDE	FILE NO	STATUS	ERP	HAA'	BEAR	DIST	REQD	CLEAR
FA 237A			Carrollton KY 38 38 23	85 12 44	-	USED		.000	0	328.4	109.76	31.0	78.76
	R	Site Restricted-Effective 1-27-89-Rsvd for WIKI per D88-31											
FM 237A	WIKI		Carrollton KY 38 39 58	85 16 51	BLN-930212KD	LIC		1.800	129	326.7	115.47	31.0	84.47
FM 238C	WQNY		Prestonsburg KY 37 41 45	82 45 24	BLN-910521KB	LIC		100.000	305	93.7	158.45	95.0	63.45
FA 238C			Prestonsburg KY 37 41 44	82 47 6	-	USED		.000	0	93.8	155.97	95.0	60.97
	G	Coordinates updated from LIC record BLH7095											
FA 239B			Jeffersonville IN 38 9 21	85 55 11	-	USED		.000	0	288.6	126.67	113.0	13.67 CLOSE
	G	Coordinates updated from LIC record BLH6215											
FM 239B	WQMF		Jeffersonville IN 38 8 16	85 56 5	BPH-940311JD	CP		28.500	196	287.6	127.34	113.0	14.34 CLOSE
FM 239B	WQMF		Jeffersonville IN 38 9 21	85 55 11	BLH-6215	LIC		34.000	177	288.6	126.67	113.0	13.67 CLOSE
FA 240C3			Livingston TN 36 22 28	85 18 20	-	USED		.000	0	203.2	171.91	142.0	29.91
	R	Site Restricted-Effective 5-20-91-Rsvd for WXXG per D90-126											
FM 240C3	WCSO		Livingston TN 36 11 36	85 20 41	BLN-920511KD	LIC	*	3.800	245	201.8	191.86	142.0	49.86
	G	From channel 240A per D90-126											
FA 240A			Franklin IN 39 30 49	86 4 7	-	USED		.000	0	325.8	231.63	115.0	116.63
	G	Coordinates updated from LIC record BLH3493											
FA 240A			Vevay IN 38 50 12	85 1 48	-	USED		.000	0	340.2	122.47	115.0	7.47 CLOSE
	G	Coordinates updated from LIC record BLH6405											
FA 240A			Maysville KY 38 38 4	83 46 48	-	USED		.000	0	35.7	114.53	115.0	.47 CLOSE
	G	Coordinates updated from LIC record BLH5394											
FA 240A			Morristown TN 36 13 40	83 19 58	-	USED		.000	0	147.9	205.39	115.0	90.39
	G	Coordinates updated from LIC record BLH7264											
FM 240A	WXXK		Morristown TN 36 13 40	83 19 58	BLH-900502KD	LIC		1.100	235	147.9	205.39	115.0	90.39
FM 240A	WFTMFM		Maysville KY 38 38 35	83 46 47	BPH-9404081B	CP		3.000	94	35.4	115.32	115.0	.32 CLOSE
FM 240A	WXXK		Morristown TN 36 13 42	83 19 57	BPH-940617ID	CP	*	.920	249	147.9	205.35	115.0	90.35
FR 240A	WXXK		Morristown TN 36 13 40	83 19 58	-	DEL		.000	0	147.9	205.39	115.0	90.39
	R	Counterproposal											
FM 240A	WPZZ		Franklin IN 39 30 49	86 4 7	BLH-3493	LIC		3.000	91	325.8	231.63	115.0	116.63
FM 240A	WKID		Vevay IN 38 50 12	85 1 48	BLH-6405	LIC		2.800	94	340.2	122.47	115.0	7.47 CLOSE
FM 240A	WFTMFM		Maysville KY 38 38 4	83 46 48	BLH-5394	LIC		3.000	91	35.7	114.53	115.0	.47 CLOSE
FM 240A	WRSLFM		Stanford KY 37 33 3	84 38 45	BLH-5027	LIC		3.000	26	197.0	28.95	115.0	-86.05 SHORT
	G	*To Channel 242C3 Per One-Step Application 941027IC 73.215 REQUIRED DIST. SEPARATION = 92.0 KM SHORT											
FA 241C3			Barbourville KY 36 52 32	83 55 9	-	USED		.000	0	151.3	116.85	89.0	27.85
	R	Site Restricted-Effective 4-22-91-Rsvd for WYVY per D90-568											
FM 241B	WQLK		Richmond IN 39 53 33	84 56 9	BLH-790530AN	LIC		50.000	107	351.9	234.66	113.0	121.66
FM 241C	WSTO		Owensboro KY 37 46 20	87 21 27	BLH-820601AO	LIC		100.000	305	270.1	247.35	165.0	82.35
FA 241B			Richmond IN 39 53 33	84 56 9	-	USED		.000	0	351.9	234.66	113.0	121.66
	G	Coordinates updated from LIC record BLH790530AN											
FA 241C			Owensboro KY 37 46 20	87 21 27	-	USED		.000	0	270.1	247.35	165.0	82.35
	G	Coordinates updated from LIC record BLH820601AO											
FR 241A	WKYI		Stamping Ground KY 38 17 43	84 33 10	RM-8593	ADD		.000	0	359.7	54.94	72.0	-17.06 SHORT
	R	PRM-Site Restricted 12 km East 73.215 REQUIRED DIST. SEPARATION = 49.0 KM CLOSE											
FM 241C3	WYVYFM		Barbourville KY 36 51 55	83 53 55	BLH-920903KC	LIC	*	25.000	99	150.8	118.73	89.0	29.73
	G	From Channel 241A per D87-494											

FM 242C3	WRSLEFM	Stanford	KY 37 31 27	84 52 12	BPH-941027IG	CP	12.500	144	222.7	41.69	42.0	-.31	CLOSE
	G	One-Step Application-From Channel 240A											
FM 242A	WIKO	Morehead	KY 38 10 56	83 26 56	BLH-940601KD	LIC	6.000	100	65.9	105.59	31.0	74.59	
FA 242A		Austin	IN 38 46 23	85 48 11	-	USED	.000	0	315.1	153.90	31.0	122.90	
	R	# 78 - SITE RESTRICTED											
FA 242C3		Stanford	KY 37 31 27	84 52 12	-	USED	.000	0	222.7	41.69	42.0	-.31	CLOSE
	R	Reserved for WRSLEFM Per One-Step Application BPH-941027IG											
FA 242A		Morehead	KY 38 11 37	83 24 16	-	USED	.000	0	66.1	109.66	31.0	78.66	
	R	Effective 10-15-90											
FA 243A		Corydon	IN 38 12 48	86 7 12	-	USED	.000	0	288.9	145.33	31.0	114.33	
	R	# 1											
FM 243B	WYGY	Hamilton	OH 39 21 11	84 19 30	BLH-860428KD	LIC	19.500	247	6.4	173.48	69.0	104.48	
FA 243B		Hamilton	OH 39 21 11	84 19 30	-	USED	.000	0	6.4	173.48	69.0	104.48	
	G	Coordinates updated from LIC record BLH860428KD											
FM 243A	WGZBFM	Corydon	IN 38 12 52	86 1 0	BLH-900503KC	LIC	3.000	100	290.2	136.79	31.0	105.79	
FA 293A		Jackson	KY 37 32 46	83 23 42	-	USED	.000	0	105.2	105.71	10.0	95.71	
	R	Site Restricted-Effective-3-25-93-Reserved for WJSNFM Per D92-23											
FM 293A	WNKR	Williamstown	KY 38 40 54	84 39 33	BLH-920428KA	LIC	1.400	145	354.5	98.30	10.0	88.30	
FA 293A		Williamstown	KY 38 37 15	84 35 45	-	USED	.000	0	357.5	91.17	10.0	81.17	
	R	Site Restricted-Effective 1-27-89											
FM 293A	WJSNFM	Jackson	KY 37 32 46	83 23 42	BLH-930818KA	LIC	1.800	185	105.2	105.71	10.0	95.71	
	G	From channel 269A per D92-23											
FM 294A	WXPC	Horse Cave	KY 37 13 57	85 52 6	BMPH-930108IC	CP MOD	2.900	145	241.9	132.52	10.0	122.52	
FM 294A	WKXOFM	Berea	KY 37 30 15	84 12 58	BLH-901115MA	LIC	1.950	178	138.2	44.12	10.0	34.12	
FA 294A		Berea	KY 37 33 19	84 19 56	-	USED	.000	0	144.8	33.28	10.0	23.28	
	R	# 15											
FA 294A		Horse Cave	KY 37 13 26	85 51 46	-	USED	.000	0	241.4	132.55	10.0	122.55	
	R	Site Restricted-Effective 7-6-92-Reserved for WLNK per D91-27											

END OF STUDY

84° 45'

84° 30'

EXHIBIT 1

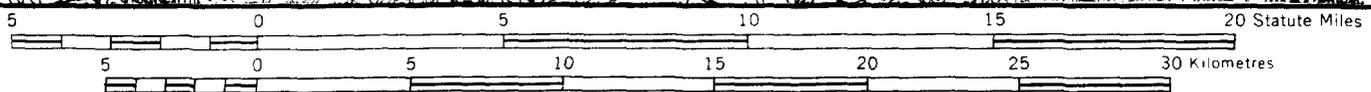
NICHOLASVILLE, KENTUCKY

PROPOSED SITE

70 dBu CONTOUR

PROPOSED CITY-GRADE COVERAGE
NEW-FM --- NICHOLASVILLE, KENTUCKY
CHANNEL : 240 A --- 6.0 kW --- 100 M HAAT
APRIL, 1995

CARL T. JONES
CORPORATION



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

MM Docket No. 89-119

In the Matter of

Amendment of Section 73.202(b), RM-6417
Table of Allotments,
FM Broadcast Stations.
(Stamping Ground, Kentucky)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 7, 1990; Released: March 22, 1990

By the Chief, Allocations Branch:

1. Pursuant to the request of James P. Gray ("Gray"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 4516 (1989), proposing the allotment of Channel 256A to Stamping Ground, Kentucky, as that community's first local FM service. Petitioner filed comments restating his intention to apply for the channel, if allotted. WHIO, Inc. ("WHIO"), licensee of Station WHKO(FM), Dayton, Ohio, filed comments. Gray filed reply comments.

2. WHIO in its comments states that spacing constraints in the direction of WHKO(FM), Channel 256A, Dayton, Ohio, restricts the available sites for the Stamping Ground allotment to a location no more than 3.7 kilometers outside the community. WHIO also contends that there is an extremely narrow area, at one point approximately 0.4 kilometers wide, in which a transmitter providing city grade coverage to Stamping Ground could be located in compliance with the Commission's minimum spacing requirements under the rules in existence at the time of the adoption of the *Notice*. WHIO also states that with the recent adoption of new and increased distance separation requirements, there will be no location where city grade coverage can be provided to Stamping Ground without a short spacing to Station WHNB, Channel 257A, Harrodsburg, Kentucky, or Station WHKO, Channel 256A, Dayton, Ohio. Finally, WHIO contends that a station at Stamping Ground would cause interference inside its .5 mV/m (54 dBu) contour.

3. Gray, in his reply comments, responds to WHIO's arguments. He states that the area where the transmitter could be located is 36 square kilometers (22 square miles), that many potential sites exist in the area for a transmitter site, and that he would be willing to provide a "certified site", if requested. Gray also states that the allotment should be based on the rules in effect at the time the proposal was filed. He states that WHIO operates at five times more than the effective radiated power allowed for its antenna height because of a "grandfathering" arrangement, and WHIO's engineering data is based on

this overpower operation. Citing Section 73.209(a) of the Commission's Rules, he contends that WHIO's argument concerning interference is simply without merit.

4. In making allotments we require a reasonable assurance that a site or potential sites meeting the Commission's requirements would be available. The area in which Gray claims that a site could be located, although not exceptionally large, appears sufficient to warrant a finding of available sites. Furthermore, no party has raised any question as to the availability of any of the land within this area. Therefore, we conclude that a fully spaced site is available.

5. As for WHIO's claim of interference, WHIO is a grandfathered station and operates in accordance with Section 73.211 of the Commission's Rules. Section 73.209 of the Rules states that permittees and licensees of FM broadcast stations are protected from interference solely to the extent specified in the distance separation requirements and the rules governing maximum power and antenna heights. We agree with Gray that WHIO's arguments are without merit. Station WHKO is not entitled to any interference protection beyond that provided for by Section 73.209 of the Commission's Rules, and the allotment of Channel 256A at Stamping Ground meets the requirements of the Commission's rules.

6. In reference to the spacing requirements, the Stamping Ground petition was processed under the "old" separation requirements. See *Report and Order* in MM Docket 88-375, 4 FCC Rcd 6375 (1989). Because this petition was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's rules. See 47 CFR § 73.213(c).

7. Based on the information before us, we believe that the public interest would be served by allotting Channel 256A to Stamping Ground, Kentucky, as that community's first local FM service. As stated in the *Notice*, Channel 256A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a site restriction 3.3 kilometers (2.1 miles) north¹ in order to avoid a short-spacing to Station WHNB(FM), Channel 257A, Harrodsburg, Kentucky.

8. Accordingly, pursuant to the authority contained 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 ORDERED. That effective **May 7, 1990**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Stamping Ground, Kentucky	256A

9. The window period for filing applications will open on **May 8, 1990**, and close on **June 7, 1990**.

10. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

¹ The coordinates are North Latitude 38-18-04 and West Longitude 84-40-52.

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

James P. Gray
10 Trinity Place
Fort Thomas, Kentucky 41075
(Petitioner)

MM Docket No. 89-119

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Stamping Ground, Kentucky) RM-6417

NOTICE OF PROPOSED RULE MAKING

Adopted: May 5, 1989;

Released: May 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of James P. Gray (petitioner), the Commission considers herein a petition for rule making seeking the allotment of Channel 256A to Stamping Ground, Kentucky as that community's first local FM service. Petitioner states his intention to apply for the channel, if allotted.

2. Channel 256A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a 3.3 kilometer (2.1 miles) site restriction north of the community.¹ The site restriction is necessary to avoid a short spacing to Station WHNB(FM), Channel 257A, Harrodsburg, Kentucky.

3. In view of the fact that Stamping Ground, Kentucky, could receive its first local FM channel the Commission believes it would be in the public interest to 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 following community:

City	Channel No.	
	Present	Proposed
Stamping Ground, Kentucky	--	256A

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 **July 17, 1989**, and reply comments on or before **August 1, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

6. 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.

7. For further information concerning this proceeding, contact Nancy J. Walls, 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

Steve Kaminer
Deputy Chief
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.

FOOTNOTE

¹ The restricted site coordinates are 38-18-04 and 84-40-52.

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 24th day of April, 1995, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "COUNTERPROPOSAL" to the following:

* Ms. Sharon P. McDonald
Allocations Branch -- Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.--Room 569
Washington, D.C. 20554

Mr. James P. Gray, President
Scott County Broadcasting, Inc.
10 Trinity Place
Fort Thomas, KY 41075


Veronica Abarre

* HAND DELIVERED