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

DISPATCHED BY

MM Docket No. 95-82

In the Matter of

Amendment of Section 73.202(b), RM-8630
Table of Allotments,
FM Broadcast Stations.
(Monticello, Perry, Quincy,
and Woodville, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1995;

Released: June 19, 1995

By the Chief, Allocations Branch:

Comment Date: August 10, 1995

Reply Comment Date: August 25, 1995

1. Before the Commission for consideration is a petition for rule making filed by Great South Broadcasting, Inc. ("petitioner"), licensee of WXSR(FM), Channel 268C2, Quincy, Florida, requesting the reallocation of Channel 268C2 from Quincy, Florida to Woodville, Florida, and the modification of its license for Station WXSR(FM) to specify Woodville as its community of license. In order to accomplish the reallocation from Quincy to Woodville, petitioner also requests the substitution of Channel 289C3 for Channel 270C3 at Monticello, Florida, and the modification of Station WJPH(FM)'s license to specify Channel 289C3, and the substitution of Channel 221A for Channel 288A at Perry, Florida, and the modification of Station WNFK(FM)'s license to specify Channel 221A. Petitioners state their intentions to apply for the respective channels, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the reallocation of Channel 268C2 from Quincy (population 7,444) to Woodville (population 2,760)¹ is mutually exclusive with the present allotment of Channel 268C2 at Quincy. Petitioner claims that its proposal will result in a preferential arrangement of allotments since it would provide Woodville with its first local

aural transmission service. Petitioner notes that Quincy would not lose its sole local aural transmission service, since it will continue to receive service from Station WWSD(AM), and Station WTPS(FM) an outstanding construction permit (currently off the air) at Quincy.² Petitioner notes that both Quincy and Woodville are located outside the Tallahassee Urbanized Area. Furthermore, in order to accommodate the reallocation of Channel 268C2 from Quincy to Woodville, petitioner has obtained the consent of the licensees of Station WJPH(FM), Monticello, Florida, and Station WNFK(FM), Perry, Florida, for the channel substitutions. Petitioner has also agreed to reimburse each licensee for the legitimate costs associated with the channel changes.

3. In further support of its proposal, petitioner states that Woodville is a Census Designated Place, located in Leon County with a 1990 U. S. Census population of 2,760 persons, and has no local aural transmission service. Petitioner also states that Woodville has several civic organizations, approximately 100 businesses, a bank, two hardware stores, an automobile dealership, several auto parts stores, a grocery store, two cabinet stores and various other retail outlets. Woodville has its own post office, volunteer fire department, recreational park, elementary school and two voting precincts.

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration, since it would not deprive Quincy of its only local aural transmission service, and would provide the community of Woodville with its first local aural transmission service. Nonetheless, we must take into account the fact that existing service will be deleted from a community. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See *Modifications, supra.*, 5 FCC Rcd at 7097 (1990). Since we are concerned with the loss of service to the community of Quincy, we request petitioner to submit any additional information as the overall public interest benefits that would be advanced from a grant of this proposal. In addition, we request petitioner to provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Station WXSR(FM), Channel 268C2 is reallocated to Woodville. The study should also indicate the number of reception services which are now available with the gain and loss areas.

TECHNICAL SUMMARY

5. An engineering analysis has determined that Channel 268C2 can be reallocated from Quincy to Woodville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.7 kilometers (1.1 miles) west³ in order to avoid a short-

¹ Population figures are taken from the 1990 U.S. Census.

² We note the pendency of a proposal filed in MM Docket No. 93-229, 8 FCC Rcd 5257 (1993), on behalf of Bitner-James Partnership, permittee of Station WTPS(FM), requesting the

substitution of Channel 264C3 for Channel 264A at Quincy and the reallocation of Channel 264C3 from Quincy to Midway, Florida.

³ The coordinates for Channel 268C2 at Woodville, Florida are

spacing to Station WHJX(FM), Channel 268C, Brunswick, Georgia; Channel 289C3 can be substituted for Channel 270C3 at Monticello, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.8 miles) south,⁴ in order to avoid a short-spacing to Station WFFM(FM), Channel 289A, Ashburn, Georgia; Channel 221A can be substituted for Channel 288A at Perry, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 kilometers (1.0 miles) southeast at the construction permit site (BPH-940930IZ) for Station WNFK(FM).⁵

6. The Commission usually does not require a station to change its transmitter site in order to accommodate a new allotment, without the consent of the affected station. Petitioner has provided a copy of an agreement with Webster Broadcasting, Inc., licensee of Station WJPH(FM), Monticello, Florida, consenting to change its existing transmitter site in order to accommodate the proposed change in community of license from Quincy, Florida, to Woodville, Florida. In addition, petitioner has also provided a copy of an agreement with RAHU Broadcasting Co., licensee of Station WNFK(FM), Perry, Florida, consenting to the proposed channel substitution for Station WNFK(FM). Since the licensee of Station WJPH(FM), Monticello, Florida, and the licensee of Station WNFK(FM), Perry, Florida have consented to the proposed change in transmitter site and channel substitutions, we shall not issue *Orders to Show Cause*; however, we will serve all parties with a copy of the *Notice*.

7. 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 communities:

City	Channel No.	
	Present	Proposed
Quincy, Florida	264A, 268C2	264A
Woodville, Florida	--	268C2
Monticello, Florida	270C3	289C3
Perry, Florida	288A	221A

8. 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.

9. Interested parties may file comments on or before **August 10, 1995**, and reply comments on or before **August 25, 1995**, 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:

Gary S. Smithwick
 Shaun A. Maher
 Smithwick & Belendiuk, P.C.
 1990 M Street, N.W., Suite 510
 Washington, D.C. 20036
 (Attorneys for Petitioner)

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

Webster Broadcasting, Inc. 400 N. Michigan Ave., #200 Chicago, IL 60611 (Licensee of Station WJPH(FM))	RAHU Broadcasting, Inc. P.O. Box 779 Perry, FL 32347 (Licensee of Station WNFK(FM))
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Joseph E. Doyle, Esq.
 Jenner & Block
 One IBM Plaza
 Chicago, IL 60611
 (Counsel for Station
 WJPH(FM))

11. 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.

12. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. 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.

North Latitude 30-18-53 and West Longitude 84-15-57.

⁴ The coordinates for Channel 289C3 at Monticello are North Latitude 30-25-05 and West Longitude 83-50-18.

⁵ The coordinates for Channel 221A at Perry are North Latitude 30-06-27 and West Longitude 83-34-00.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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 ac-

companied 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.