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

DISPATCHED BY

MM Docket No. 95-88

In the Matter of

Amendment of Section 73.202(b), RM-8641
 Table of Allotments,
 FM Broadcast Stations.
 (Rose Hill and Trenton, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 8, 1995;

Released: June 19, 1995

Comment Date: August 10, 1995

Reply Comment Date: August 25, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Duplin County Broadcasters ("petitioner) requesting the substitution of Channel 284C2 for Channel 284A at Rose Hill, North Carolina, the reallocation of Channel 284C2 to Trenton, North Carolina, and the modification of Station WBSY's license to specify Trenton as its community of license.¹ Duplin states that it will promptly apply for the channel, if reallocated to Trenton.

2. Petitioner seeks modification of Station WBSY's license pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits 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. Petitioner contends that adoption of the proposal will result in a preferential arrangement of allotments by providing Trenton with its first local aural transmission service without depriving Rose Hill of its sole local aural broadcast service since it will continue to receive local service from daytime-only AM Station WEGG. In support of the proposal, it states that Trenton is the seat of Jones County, with a population of 284 persons.² Further, petitioner states that Jones County, with a population of 9,414 persons, has no aural broadcast service licensed to any community within the county. While Rose Hill is more populous, with a population of 1,287 persons, and its county, Duplin, has a population of 39,995 persons, petitioner submits that the substitution of channels and change of community will enable Station WBSY to increase the number of persons it serves with a 60 dBu signal from its present 36,354 persons to 336,401

persons, and to increase the area it serves from 1,879 square kilometers to 8,3245 square kilometers. Finally, petitioner states that Trenton is not located in or near any urbanized area.

3. We believe petitioner's proposal warrants consideration since the substitution of Channel 284C2 for Channel 284A and the reallocation of the channel from Rose Hill to Trenton, could provide the latter community with its first local aural transmission service and enable Station WBSY to improve its facilities and thus serve a larger area. However, since petitioner proposes to relocate its transmitter site to accommodate its proposal, it may result in areas that will lose existing reception service. Therefore, although petitioner has provided information in its proposal concerning the areas and populations which will receive a new service, it is requested to also provide information concerning the areas and populations which will lose existing service if Channel 284C2 is allotted to Trenton. The study should also show the total reception service that is now available within both the gain and loss areas.

Technical Analysis

4. Channel 284C2 can be allotted to Trenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) west to accommodate petitioner's desired transmitter site.³ We note that the allotment of Channel 284C2 to Trenton is short-spaced to the present operation of Station WMSQ, Havelock, NC, on Channel 285A. However, pursuant to MM Docket 86-65, Station WMSQ has been ordered to modify its operation to specify Channel 286C2 and the Channel 284C2 allotment at Trenton does comply with the mileage separation requirements to the reference coordinates for Channel 286C2 at Havelock.⁴ See 2 FCC Rcd 3319 (1987). Therefore, should this proposal ultimately be adopted, final licensing of Station WBSY may be contingent upon the licensing of Station WMSQ on Channel 286C2 instead of its present Channel 285A.

5. 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:

City	Channel No.	
	Present	Proposed
Rose Hill, North Carolina	284A	---
Trenton, North Carolina	---	284C2

6. 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

¹ Pending before the Commission is an application to assign the license of Station WBSY to RMB Broadcasting, Inc. ("RMB") (File No. BALH-950323GH). Petitioner states that this petition is being filed at this time by the licensee/assignor with the understanding that RMB will continue to prosecute the petition following consummation of the assignment of license.

² Population figures are taken from the 1990 U.S. Census,

unless otherwise indicated.

³ The coordinates for Channel 284C2 at Trenton are North Latitude 35-04-00 and West Longitude 77-22-00.

⁴ The proposed allotment of Channel 284C2 to Trenton also complies with the mileage separation requirements with respect to the application of Station WMSQ (BPH-9410191C).

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. 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:

Peter Gutmann, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, NW, Suite 200
Washington, D.C. 20006
(Counsel to petitioner)

8. 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.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, 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.

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 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.