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Federal Communications Commission DA 96-1627

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-204
Table of Allotments,	)	RM-8876
FM Broadcast Stations.	)	
(Martin and Tiptonville, Tennessee)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1996 **Released:** October 4, 1996

Comment Date: Novermber 25, 1996
Reply Comment Date: December 10, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Thunderbolt Broadcasting Company ("petitioner"), licensee of Station WCMT(FM), Channel 269A, Martin, Tennessee, requesting the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee. In order to accommodate Station WCMT(FM)'s upgrade, petitioner also requests the deletion of vacant Channel 267C3 at Tiptonville, Tennessee. Petitioner states it will apply for Channel 267C3 at Martin, if allotted.

2. In support of its proposal, petitioner states that Channel 267C3 may be deleted from Tiptonville since the channel is presently vacant and there are no pending applications. It notes that a construction permit for Station WAAT(FM), Channel 267C3 at Tiptonville was cancelled and the call sign was deleted. Petitioner states that notice of the cancellation and deletion was given on August 6, 1996, by Public Notice Report No. 23796. Subsequently, the former permittee of Station WAAT(FM) notified the Commission, by letter dated August 22, 1996, that it would not pursue any appeals with respect to the cancelled construction permit. Petitioner further notes that if the allotment at Tiptonville is deleted it will seek to upgrade its station.

3. We believe petitioner's proposal warrants consideration since it could enable Station WCMT(FM) to improve its service to the public. However, we note that the Commission does not delete a channel in which interest has been expressed. Therefore, should the Commission

receive an expression of interest by the initial comment deadline specified herein for Channel 267C3 at Tiptonville, Tennessee[1], petitioner's proposal to delete Channel 267C3 at Tiptonville may be dismissed. Channel 267C3 can be allotted to Martin in compliance with the Commission's minimum distance separation requirements, provided Channel 267C3 is deleted at Tiptonville, with a site restriction 14.1 kilometers (8.8 miles) northwest to accommodate petitioner's desired site.[2] As requested, we shall propose to modify the license of Station WCMT(FM) at Martin, Tennessee, to specify operation on Channel 267C3 in lieu of Channel 269A in accordance with Section 1.420(g) of the Commission's Rules.

4. 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 communities listed below, to read as follows:

City	Channel No. Present	Proposed
Martin, Tennessee	269A	267C3
Tiptonville, Tennessee	267C3	--

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 25, 1996, and reply comments on or before December 10, 1996, 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
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006

[1] The coordinates for the allotment of Channel 267C3 at Tiptonville are North Latitude 36-22-42 and West Longitude 89-28-30.

[2] The coordinates for Channel 267C3 at Martin are North Latitude 36-26-09 and West Longitude 88-57-30.

(Counsel for petitioner)

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 Pam Blumenthal, 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

Attachment: Appendix

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 protection. 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 proposals 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.