

RECEIVED

JUL 21 1998

Federal Communications Commission

DA 98-1373

FCC MAIL ROOM

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

In the Matter of)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-123
Table of Allotments,)	RM-9291
FM Broadcast Stations.)	
(Marysville and Hilliard, Ohio))	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 8, 1998

Released: July 17, 1998

Comment Date: September 8, 1998
Reply Comment Date: September 23, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Citicasters Co. ("petitioner"), licensee of Station WKFX, Channel 289A, Marysville, Ohio, requesting the reallocation of Channel 289A from Marysville to Hilliard, Ohio, as the community's first local aural service, and the modification of Station WKFX's license accordingly.¹ Petitioner states that it will apply for the channel, if allotted.

2. Citicasters filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization 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 of License"), FCC Rcd 4870 (1989), recon. granted in part ("Modification of License MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Citicasters states that

¹ Petitioner alternatively requests that this petition be considered as a petition for reconsideration of the May 1, 1998, dismissal of its November 26, 1997, petition (RM-9207) requesting the same change in the Table of FM Allotments. That request was dismissed because the transmitter site specified therein was short-spaced to the licensed site of co-owned Station WCHO-FM, Channel 288A, Washington Court House, Ohio. While the petitioner had filed an application on the same day specifying a new transmitter site which would have obviated the short-spacing, the staff found that the petition was unacceptable for consideration since it was contingent upon the grant of its pending application. The transmitter site specified in the November petition was also in conflict with the pending application of Blue Chip Broadcasting, Station WMXG, Channel 292A, London, Ohio, to relocate its transmitter site (BPH-971202IE). This petition specifies a different transmitter site which cures the short-spacings. Based on this fact, we have accepted petitioner's current filing as a new petition for rule making.

Hilliard is an incorporated city with a 1990 U.S. Census population of 11,796 persons. It acknowledges that Hilliard is within the Columbus, Ohio, Urbanized Area but states that it is not dependent on Columbus for services. Rather, Citicasters states that Hilliard has its own government, with an elected mayor and city council, its own recreation and parks department, police department and school district. It shares a fire department with Norwich Township. In addition, petitioner points out that Hilliard has its own medical facilities such as the Hilliard Chiropractic Center, the Hilliard Foot & Ankle Center, the Hilliard Branch of the Mt. Carmel Health System, and the Hilliard Square Medical Center, and its own weekly newspaper, the Hilliard Northwest News. Citicasters also points out that Hilliard has more than twenty churches and several civic organizations, including a Chamber of Commerce, Moose Home Lodge, American Legion Memorial Post, Avery Lodge F&AM, Veterans of Foreign Wars, Knights of Pythias Champion Lodge, and Redmen Lodge. According to Citicasters, Hilliard also is a commercial center, being home to the headquarters of CompuServe, as well as numerous restaurants, grocery stores and other retail outlets. Citicasters states that an estimated 15,400 persons are employed in Hilliard. Citicasters states that Marysville, with its smaller population of 9,656 persons, will continue to receive local aural transmission service from fulltime AM Station WUCO.

3. Citicasters states that the allotment of Channel 289A to Hilliard would cover only 38.6 percent of the Columbus Urbanized Area with a 70 dBu city-grade signal. Therefore, since less than 50% of the Urbanized Area will receive a 70 dBu signal, it contends that its proposal should be considered as providing a first local service to the community. In addition, it states that Station WKFX currently serves 498,569 persons within a 2,515 square kilometer area while the reallocation would enable the station to serve a total of 947,058 persons, which reflects an increase of 448,489 persons within its 60 dBu contour.

4. We believe petitioner's proposal warrants consideration since the allotment of Channel 289A could provide Hilliard with its first local aural service while not depriving Marysville of its sole local aural service. However, in instances such as this one where the proposed community of license is located within an urbanized area, we have applied the Huntington doctrine to the proposal,² regardless of the percentage of city grade coverage over the urbanized area. See, e.g., Malvern and Bryant, Arkansas, DA 98-692, released April 24, 1998, and cases cited therein. Our concern in these cases has been whether a suburban community located within an urbanized area is sufficiently independent of the center city of the urbanized area to warrant a first local service preference or whether the suburban community should be credited with all of the local transmission services licensed in the urbanized area. Therefore, petitioner is requested to submit information sufficient to demonstrate that Hilliard is deserving of a first local service preference, using the factors enumerated in RKO General ("KFRC"), 5 FCC Rcd 3222

² Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951).

(1990) and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).³

5. Since petitioner proposes to relocate its transmitter site, the reallocation would result in some areas losing existing reception services.⁴ Therefore, petitioner is requested to provide data reflecting the reception services which are available within the gain and loss areas that would result from the allotment of Channel 289A to Hilliard. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 289A at Hilliard or require the petitioner to demonstrate the availability of an additional equivalent channel for their use.

Technical Summary

6. Channel 289A can be allotted to Hilliard in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.1 kilometers (7.5 miles) northeast to avoid a short-spacing to the licensed site of Station WCHO-FM, Channel 288A, Washington Court House, Ohio, and to the pending application of Station WMXG, Channel 292A, London, Ohio (BPH-971202IE).⁵ Canadian concurrence in this allotment is required since Hilliard is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

7. 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:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hilliard, Ohio	--	289A
Marysville, Ohio	289A	--

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.

³ The three criteria considered in making a first local service preference determination are (1) signal to population coverage, i.e., the degree to which a station would provide coverage not only to the suburban community but to the adjacent metropolis as well; (2) the size and proximity of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

⁴ The Commission has previously 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, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, *supra*, at 5 FCC Rcd 7097.

⁵ The coordinates for Channel 289A at Hilliard are 40-07-47 North Latitude and 83-05-20 West Longitude.

9. Interested parties may file comments on or before September 8, 1998, and reply comments on or before September 23, 1998, 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:

Marissa G. Repp
F. William LeBeau
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109
(Counsel to petitioner)

10. 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.

11. 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

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 Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.