

AUG 31 9 36 AM '98

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

DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-154
Table of Allotments,)	RM-9174
FM Broadcast Stations.)	
(Kosciusko and Goodman, Mississippi))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 19, 1998

Released: August 28, 1998

Comment Date: October 19, 1998

Reply Comment Date: November 3, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Rainey Broadcasting, Inc. ("petitioner"), permittee for a new FM broadcast station on Channel 277C3 at Kosciusko, Mississippi (File No. BPH-950525MK), requesting the reallocation of Channel 277C3 from Kosciusko to Goodman, Mississippi, as the latter community's first local aural transmission service, and modification of its authorization accordingly.¹ Petitioner stated its intention to apply for Channel 277C3 if it is reallocated to Goodman, and to construct the facility.

2. Petitioner seeks to invoke the provisions of 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, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of the proposal, petitioner states that Goodman is an incorporated community with a population

¹ This petition for rule making was initially dismissed by letter on January 7, 1998, based upon the staff's belief that at the time of filing the reallocation request, the petitioner herein was one of two mutually exclusive applicants for Channel 277C3 at Kosciusko, and therefore the request of only one of the applicants to reallocate Channel 277C3 to Goodman could not be honored. In actuality, at the time the petition for rule making was filed on September 17, 1997, the petitioner herein was the sole remaining applicant for Channel 277C3 at Kosciusko. The one other applicant for Channel 277C3, Boswell Broadcasting Company, had voluntarily requested withdrawal of its application (File No. BPH-950504MF) on September 2, 1997, and was subsequently dismissed. Petitioner filed a petition for reconsideration of the letter ruling returning its request. In light of the action taken herein, the petition for reconsideration is moot and will be dismissed at the conclusion of this proceeding.

of 1,256,² containing its own post office and zip code (39079), as well as numerous commercial facilities, governmental services and cultural organizations.

3. In further support, petitioner states that the requested reallocation of Channel 277C3 to Goodman, which is not within nor near an urbanized area, is mutually exclusive with its existing authorization at Kosciusko (population 6,986). The distance between Kosciusko and the petitioner's specified site at Goodman is 17.2 kilometers (11 miles) whereas a distance of 153 kilometers (95 miles) is required in this instance.³

4. In further support of its proposal petitioner advises that the reallocation to Goodman would enable the station to increase service within the proposed 60 dBu coverage area from its present theoretical level of 51,315 persons in an area of 4,775.3 square kilometers to 51,867 persons in an area of 4,803.8 square kilometers. Further, petitioner asserts that adoption of the proposal would result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures,⁴ 90 FCC 2d 88 (1982), as the reallocation would provide a first local aural transmission service to Goodman (priority three), whereas Kosciusko would retain local aural transmission service from Stations WKOZ(AM), and WBKJ(FM), Channel 286C1 (priority four).⁵ Moreover, petitioner remarks that as its authorization at Kosciusko has not been licensed to operate on Channel 277C3, its reallocation request will not deprive Kosciusko of an "existing service", citing Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995); Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 7706 (1995); and Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995).

5. In consideration of the above, we will propose to reallocate Channel 277C3 from Kosciusko to Goodman, Mississippi, and modify the authorization therefor (File No. BPH-950525MK), since it would provide Goodman with its first local aural transmission service and enable the proposed station to increase its potential service area. As the petitioner's request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 277C3 at Goodman, Mississippi.

²According to the 1990 U.S. Census, Goodman is attributed with a population of 3,487. Therefore, petitioner is requested to clarify the basis of its reported figure.

³Coordinates at the petitioner's specified transmitter site at Goodman are 32-58-45 and 89-54-22. Coordinates for Channel 277C3 at Kosciusko are 32-58-38 and 89-43-20.

⁴The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

⁵Petitioner also attributed Station WJTA(FM), Channel 219A, as a provider of local service to Kosciusko. However, according to Commission records, the license issued to Station WJTA(FM) (File No. BLED-890821KA) was cancelled and its call sign deleted on March 20, 1998. A petition for reconsideration of that action has been filed.

6. Channel 277C3 can be allotted to Goodman, Mississippi, at the petitioner's specified site, located 1.7 kilometers (1 mile) northeast of the community at coordinates 32-58-45 and 89-54-22, consistent with the technical requirements of the Commissions' Rules.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Goodman, Mississippi	--	277C3
Kosciusko, Mississippi	277C3,286C1	286C1

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 October 19, 1998, and reply comments on or before November 3, 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's counsel, as follows:

Mark N. Lipp, Esq.
Shook, Hardy and Bacon
801 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

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), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, 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 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 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 Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.