

FCC MAIL SECTION

Federal Communications Commission

DA 99-1293

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-244
Table of Allotments,	)	RM-9678
FM Broadcast Stations.	)	
(Cumberland, Kentucky and	)	
Weber City, Virginia)	)	
	)	

NOTICE OF PROPOSED RULE MAKING

**Adopted: June 23, 1999;**

**Released: July 2, 1999**

**Comment Date: August 23, 1999**

**Reply Comment Date: September 7, 1999**

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cumberland City Broadcasting Company ("petitioner"), licensee of Station KSEH(FM), Channel 274A, Cumberland, Kentucky, requesting the substitution of Channel 274C3 for Channel 274A at Cumberland, the reallocation of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station KSEH(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to Weber City.

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, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states Weber City is located in Scott County and has its own mayor/council form of government. Weber City has its own local police and fire services, a local zoning body and taxing priority. The community has its own local post office, zip code, churches, banks, schools, and parks. Weber City also has many local businesses which employ local residents including two large grocery stores, tobacco warehouse and a bookbinding company. Petitioner further

states that the reallocation of Channel 274C3 from Cumberland (population 3,112)<sup>1</sup> to the smaller community of Weber City (population 1,377) would not result in the removal of Cumberland's sole local service, since Station WCPM(AM) would remain licensed to the community. Both Cumberland and Weber City receive five or more reception services are considered to be well-served.

3. Moreover, petitioner states that Weber City is not located in an urbanized area. However, petitioner advises that the proposed transmitter site would provide a 70 dBu signal over more than 50% of the Kingsport, Tennessee Urbanized Area. Therefore, petitioner has submitted the required Tuck showing which sufficiently establishes Weber City has a separate and independent community from the Kingsport, Tennessee Urbanized Area.<sup>2</sup> Clearly, concludes petitioner, Weber City possesses all of the criteria of a well-established community separate and independent from any nearby city and is deserving of its own local aural transmission service. Since Station WSEH(FM) seeks to change its transmitter site, petitioner is requested to submit a gain and loss area study.

4. We believe that the proposal warrants consideration since the upgrade and reallocation of Channel 274C3 from Cumberland, Kentucky to Weber City, Virginia, could provide the community with first local aural transmission service, and allow Station WSEH(FM) to expand its service area. Furthermore, the reallocation would not deprive Cumberland of its sole local service, whereas Station WCPM(AM) would remain licensed to the community. An engineering analysis has determined that Channel 274C3 can be reallocated to Weber City in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) south at petitioner's requested site.<sup>3</sup> As requested, we shall propose to modify Station WSEH(FM)'s license to specify operation on Channel 274C3 at Weber City, Virginia, as its new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 274C3 at Weber City, Virginia, or require petitioner to demonstrate the availability of any additional equivalent class channel for use by such parties.

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 communities listed below, to read as follows:

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<sup>1</sup>All population figures are taken from the 1990 U.S. Census.

<sup>2</sup>See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>3</sup>The coordinates for Channel 274C3 at Weber City are 36-31-36 North Latitude and 82-35-14 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Cumberland, Kentucky	274A	---
Weber City, Virginia	----	274C3

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 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 23, 1999**, and reply comments on or before **September 7, 1999**, 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 petitioners, or their counsel or consultants, as follows:

William J. Pennington, III  
 Post Office Box 403  
 Westfield, Massachusetts 01086  
 (Counsel for 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 Sharon P. McDonald, 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.