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FCC MAIL SECTION

Federal Communications Commission DA 99-2582

DEC 2 2 06 PM '99

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

DISPATCHED BY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 99- 334
Table of Allotments,	)	RM-9772
FM Broadcast Stations.	)	
(Carney, Michigan)	)	
	)	
(Lindale, Texas)	)	MM Docket No. 99-335
	)	RM-9771
	)	
(Rocksprings, Texas)	)	MM Docket No. 99-336
	)	RM-9758
	)	
(Santa Anna, Texas)	)	MM Docket No. 99-337
	)	RM-9524
	)	
(Shiner, Texas)	)	MM Docket No. 99-338
	)	RM-9746

NOTICE OF PROPOSED RULE MAKING

Adopted: November 10, 1999 **Released: November 22, 1999**

Comment Date: January 13, 2000
Reply Date: January 28, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combing separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-334, RM-9772

Petitioner: Escanaba License Corp.

Lyle R. Evans, President	Denise B. Moline
Escanaba License Corp.	100 Carpenter Drive, Suite 100
1101 A. Ludington Street P. O. Box 217	
Escanaba, Michigan 49829	Sterling, Virginia 20167
	(Counsel for Escanaba License Corp.)

Proposal: Allot Channel 260A at Carney, Michigan, as the community's first local FM broadcast service.

Community	Present	Proposed
Carney, Michigan	---------	260A

Coordinates: 45-35-30 NL and 87-39-37 WL

Additional Information: Channel 260A can be allotted to Carney with a site restriction 7.8 kilometers (4.9 miles) west of the community. Canadian concurrence will be requested for the proposal for Carney. Carney, located in Menominee County, is an incorporated community with a post office and zip code and a population of 197 people according to the 1990 census and 236 people according to the 1980 Census. Although Escanaba License Corp. has stated that Carney is administered by a Village President and three council members, has its own municipal water and sewer system, fire station, library, churches, public school system, and that Carney's business and professional community provides goods and services to residents of Carney and vicinity, it failed to provide names and addresses for council members or identify the local businesses with names and addresses. Parties filing comments are requested to present the Commission with specific information to demonstrate that Carney has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. To support community status, parties could provide names of businesses which contain "Carney" in their names, excerpts from a telephone book showing Carney's separate telephone exchange, a list of industries with addresses, name and address of the mayor, council members, evidence that rural residents view Carney as a center for shopping and medical services, name and address of schools, parks, civic associations, or any additional information to support community status. Failure to provide the requested information will result in a denial of the proposal.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

B. MM Docket No. 99-335, RM-9771

Petitioner: Café Broadcasting, Inc.[1]

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[1] Although petitioner's request was signed, he failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also amendment of Sections 1.420 and 73.3584 of the Commissin's Rules Concerning Abuses of

c/o Wayne Blackwelder
Café Broadcasting, Inc.
2122 Anthony Drive
Tyler, Texas 75703

Proposal: Allot Channel 239A at Lindale, Texas, as the community's first local broadcast service.

Community	Present	Proposed
Lindale, Texas	----------	239A

Coordinates: 32-32-09 NL and 95-21-36 WL

Additional Information: Channel 239A can be allotted to Lindale with a site restriction 5.4 kilometers (3.3 miles) northeast of the community. Lindale is an incorporated community located in Smith County with its own post office and zip code (75771) and has a population of 2,428 people according to the 1990 U.S. Census.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

C. MM Docket No. 99-336, RM-9758

Petitioner: Rocksprings Radio Broadcasting Company

c/o Robert Lewis Thompson
Taylor Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, Virginia 22314

Proposal: Allot Channel 223A at Rocksprings, Texas, as that community's first local FM broadcast service.

Community	Present	Proposed
Rocksprings, Texas	---------	223A

Coordinates: 30-05-18 NL and 100-18-02 WL

Additional Information: Channel 223A can be allotted to Rocksprings with a site restriction 11.9 kilometers (7.4 miles) northwest of the community. Since Rocksprings is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican government will be requested for this allotment. Additionally, we find that Rocksprings is an incorporated community in Edwards County with a population of 1,339 people according to the 1990 U.S. Census. Rocksprings is the County Seat for Edwards County and has its own post office and zip code (78880).

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the Commission's Processes, 5 FCC Rcd 3911, n.41 (1990). Café Broadcasting, Inc. is requested to rectify this omission in comments.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

D. MM Docket No. 99-337, RM-9524

Petitioner: Wagonwheel Broadcasting of Santa Anna

c/o Henry E. Crawford
Law Offices of Henry E. Crawford
1150 Connecticut Avenue, N.W., Suite 900
Washington, D. C. 20036-4192

Proposal: Allot Channel 288C3 to Santa Anna, Texas, as that community's first FM broadcast service.[2]

Community	Present	Proposed
Santa Anna, Texas	---------	288C3

Coordinates: 31-37-38 NL and 99-20-03 WL

Additional Information: Channel 288C3 can be allotted to Santa Anna with a site restriction 12.7 kilometers (7.9 miles) south of the community. Santa Anna is an incorporated community located in Coleman County with its own post office and zip code (76878) and has a population of 1,249 people according to the 1990 U.S. Census. Mexican concurrence will be requested for this allotment.

FCC Contact: Kathleen Scheuerle, (202)418-2180

E. MM Docket No. 99-338, RM-9746

Petitioner: Elgin FM Limited Partnership

c/o Ann C. Farhat
Bechtel & Cole Chartered
1901 L Street, N.W., Suite 250
Washington, D. C. 20036

Proposal: Allot Channel 232C3 to Shiner, Texas, as the community's first local broadcast service.

Community	Present	Proposed
Shiner, Texas	--------	232C3

Coordinates: 29-28-50 NL and 97-19-10 WL

[2] Wagonwheel filed a petition for rule making on December 10, 1998, requesting the allotment of Channel 290C2 at Santa Anna, Texas, which conflicted with counterproposals filed in MM Docket No. 98-198, Cross Plains, Texas. See 13 FCC Rcd 20965 (1998). On august 4, 1999, Wagonwheel withdrew its interest in Channel 290C2 at Santa Anna and requested the allotment of Channel 288C3 in lieu of Channel 290C2.

Additional Information: Channel 232C3 can be allotted to Shiner, Texas, in compliance with the Commission's spacing requirements provided there is a site restriction 15.5 kilometers east of the community. Since Shiner is located within 320 kilometeres of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for this proposal. Shiner is an incorporated community in Lavaca County with its own post office and zip code (77984) and a 1990 Census population of 2,074 people.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. 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 in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before January 13, 2000, and reply comments on or before January 28, 2000, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. 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.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. 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 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 this 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, 445 Twelfth 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 Public Reference Room at its Headquarters, Washington, D. C.