

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

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FCC MAIL SECTION

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MM Docket No. 00-57  
Table of Allotments, ) RM-9825  
FM Broadcast Stations. )  
(Gadsden and Springville, Alabama) )

NOTICE OF PROPOSED RULE MAKING

Adopted: March 22, 2000

Released: March 31, 2000

Comment Date: May 22, 2000  
Reply Comment Date: June 6, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Capstar Royalty II Corporation ("petitioner"), licensee of Station WQEN(FM), Channel 279C1, Gadsden, Alabama, seeking the substitution of Channel 279C for Channel 279C1,<sup>1</sup> the reallocation of Channel 279C to Springville, Alabama, as that community's first local aural transmission service, and modification of its authorization accordingly. Petitioner stated its intention to apply for Channel 279C if it is reallocated to Springville, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules that 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 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part "Change of Community MO&O", 5 FCC Rcd 7094 (1990). In support of the proposal, petitioner claims that the reallocation of Channel 279C from Gadsden (pop. 45,523)<sup>2</sup> to Springville (pop. 1,910), would result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures<sup>3</sup> by providing a first local service to Springville (priority three), whereas Gadsden would retain local aural transmission service from educational FM Stations WTBB, Channel 210C3 and

<sup>1</sup> Petitioner advises that it currently has pending before the Commission a one-step application to upgrade Station WQEN from Channel 279C1 to Channel 279C. See File No. BMPH-980713IA.

<sup>2</sup> Population figures reported herein were taken from the 1990 U.S. Census Reports.

<sup>3</sup> The FM 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). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

WSGN, Channel 218C3, as well as AM Stations WAAX, WMGJ, and WGAD.

3. In further support of the proposal petitioner advises that the proposed allotment of Channel 279C at Springville will result in a net service gain to 269,770 persons and 9,758.3 square kilometers, as compared to the current allotment of Channel 279C1 at Gadsden. Although the proposal would create a theoretical loss area of 531.7 square kilometers containing a population of 72,142 persons as compared with the current allotment at Gadsden, petitioner states that the loss area will continue to receive reception service from at least five full-time broadcast signals.<sup>4</sup> Further, petitioner advises that the allotment reference coordinates proposed for Channel 279C at Springville are the allotment coordinates specified in the referenced pending one-step application at coordinates 33-54-32 NL and 86-17-16 WL. Operation from that site would provide a 70 dBu signal over less than 50% of the Birmingham Urbanized Area.<sup>5</sup>

4. Petitioner reports that Springville is unincorporated, but is listed as a Census Designated Place in the 1990 U.S. Census Reports, and is attributed therein with a population of 1,910 persons. Moreover, petitioner comments that Springville has its own post office (zip code 35146), police and fire departments, public library, museum, churches, schools and businesses. In addition petitioner believes that as Springville is governed by a mayor and seven member city council, it qualifies as a community for allotment purposes.

5. A staff review of the proposal reveals that WQEN's Class C1 facility at Gadsden, an Urbanized Area, is located approximately 60 kilometers (37.3 miles) northeast of the nearest border of the Birmingham, Alabama, Urbanized Area. Station WQEN currently provides a 70 dBu contour to approximately 79.8% of the Gadsden Urbanized Area, as well as 42.5% of the Birmingham Urbanized Area. The reference site proposed to accommodate Channel 279C at Springville is located 32.8 kilometers (20.4 miles) northeast of that community at coordinates 33-58-04 NL and 86-12-35 WL. While the proposed reference site would reduce WQEN's current 70 dBu coverage of the Birmingham, Alabama, Urbanized Area to 26.6%, it would expand such coverage to 100% of the Gadsden Urbanized Area. Moreover, we recognize that Springville is not located within any Urbanized Area, but rather lies approximately 11 kilometers (6.8 miles) northeast of the nearest border of the Birmingham Urbanized Area. However, if a station seeks to change its community of license to

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<sup>4</sup> Specifically, petitioner advises that FM Stations WODL, WZRR, WMJJ, WYSF and WDJC, all Birmingham, Alabama, will continue to provide service to Gadsden.

<sup>5</sup> However, petitioner's application site proposes the use of a directional antenna pursuant to the provisions of Section 73.215 of the Commission's Rules in order to avoid a short-spacing to Station WACR-FM, Channel 280C2, Columbus, Mississippi, at coordinates 33-24-27 NL and 88-08-27 WL. In recognition of the fact that the Commission does not permit the use of a directional antenna to meet the minimum distance separation requirements of Section 73.207(b) at the allotment stage, petitioner's engineering study has proposed a fully-spaced allotment reference site at coordinates 33-58-04 NL and 86-12-35 WL.

one located outside of an urbanized area, but whose signal would place a 70 dBu signal over 50% or more of an Urbanized Area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In this instance, if Channel 279C is allotted to Springville, Station WQEN will also provide a 70 dBu signal over 100% of the Anniston, Alabama, Urbanized Area. Therefore, although petitioner provided information to demonstrate that Springville contains community indicia, it is requested to provide additional information to determine Springville's independence from the Anniston Urbanized Area to warrant a first local service preference. See, Modification of License MO&O, *supra*, at 7097.<sup>6</sup>

6. As petitioner intends to relocate its transmitter site, there will be loss and gain areas. In that regard, our engineering analysis reveals that based upon theoretical maximum omnidirectional 60 dBu contours from WQEN's current Class C1 site at Gadsden and proposed Channel 279C at Springville, the loss area would encompass 597.2 square kilometers, containing a population of 68,856. However, the loss area will continue to be served by at least five full-time signals. No white or gray areas would be created. The reallocation to Springville would result in a population gain of 315,617 persons within an area of 10,676.4 square kilometers. No first or second full-time aural services would be provided within the proposed gain area.

7. As indicated above WQEN's pending one-step application site to accommodate Channel 279C at Gadsden is filed pursuant to the provisions of Section 73.215 of the Commission's Rules. Therefore, to assure compliance with Section 73.207(b)(1), petitioner has proposed a fully-spaced reference site for Channel 279C for allotment purposes, located 32.8 kilometers (20.4 miles) northeast of Springville at coordinates 33-58-04 NL and 86-12-35 WL. Therefore, we are designating that reference site for purposes of this rule making proceeding. See Princeton and Elk River, Minnesota, 13 FCC Rcd 22806 (1998).

8. Channel 279C can be allotted to Springville consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 32.8 kilometers (20.4 miles) northeast of the community at coordinates 33-58-04 NL and 86-12-35 WL.

9. In consideration of the above, we will propose to substitute Channel 279C for Channel 279C1 at Gadsden and reallocate Channel 279C to Springville, as requested. As the petitioner's modification request complies with the requirements of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 279C at Springville.

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<sup>6</sup> See also, Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), and Elizabeth City, North Carolina and Chesapeake, Virginia, 7 FCC Rcd 6815 (1992).

10. In light of the above, 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, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Gadsden, Alabama	279C1 <sup>7</sup>	--
Springville, Alabama	--	279C

11. 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.

12. Interested parties may file comments on or before May 22, 2000, and reply comments on or before June 6, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Gregory L. Masters, Esq.  
 E. Joseph Knoll, III, Esq.  
 Wiley, Rein & Fielding  
 1776 K Street, N.W.  
 Washington, DC 20006

13. 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.

14. 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

<sup>7</sup> Although Station WQEN is currently licensed to operate on Channel 279C1, 47 CFR § 73.202(b), the FM Table of Allotments reflects Channel 279C is allotted at Gadsden. According to Commission records, Station WQEN filed a one-step application for a construction permit (File No. BPH-19971114IH) to change its channel of operation. A license to cover the construction permit (File No. BLH-19980710KF) was granted December 6, 1999.

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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 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 Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.