

Federal Communications Commission

DA 00-1221

JUN 5 11 02 AM '00

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-102
Table of Allotments,	)	RM-9888
FM Broadcast Stations.	)	
(Charlotte Amalie, Frederiksted, and	)	
Christiansted, Virgin Islands)	)	

**NOTICE OF PROPOSED RULE MAKING**  
**AND**  
**ORDER TO SHOW CAUSE**

**Adopted: May 24, 2000**

**Released: June 2, 2000**

Comment Date: July 24, 2000  
Reply Comment Date: August 8, 2000

The Chief, Allocations Branch:

1. The Commission has before it the joint petition for rule making filed by Ocean FM Media and Island Prime Media ("petitioners"), requesting the allotment of Channel 257A at Charlotte Amalie, Virgin Islands; and the allotment of Channel 258A at Frederiksted, Virgin Islands. To accommodate the allotments, petitioners also request the substitution of Channel 293B for Channel 258B at Christiansted, and the modification of Station WVIQ-FM's license accordingly. Petitioners state their intention to apply for the respective channels, if allotted.

2. We believe petitioners' proposals warrant consideration since the allotment of Channel 257A could provide Charlotte Amalie with its seventh local commercial FM service; and the allotment of Channel 258A at Frederiksted could provide the community with its fourth local FM transmission service. As requested, we also propose to modify the license of Station WVIQ-FM to specify Channel 293B at Christiansted in lieu of Channel 258B.

3. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. In this case, petitioners have not stated their willingness to reimburse the licensee of Station WVIQ-FM affected stations for the reasonable costs associated with its frequency change. See Columbus, Nebraska, et al., 59 RR 2d 1184 (1986). Petitioners are requested to state their willingness to reimbursement JKC Communciations of the Virgin Islands for reasonable costs incurred for the channel change. Failure to do so, may result in the dismissal of this proposal.

---

Technical Summary

4. An engineering analysis has determined that Channel 257A can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) west<sup>1</sup>; and Channel 258A can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements at city reference coordinates.<sup>2</sup> To accommodate the allotments, Channel 293B can be substituted at Christiansted in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) southeast at Station WVIQ-FM's presently licensed site.<sup>3</sup>

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:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Charlotte Amalie, Virgin Islands	*226A, 241B1, 250B, 271B, *275A, 282B, 287B. 297A	*226A, 241B1, 250B, 271B, *275A, 282B, 287B 297A, 257A
Frederiksted, Virgin Islands	252A, 269B1, 278A,	252A, 258A, 269B1, 278A,
Christiansted, Virgin Islands	228B1, <sup>4</sup> 236B, 258B, 262B, 285A	228B1, 236B, 262B, 285A 293B

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications

---

<sup>1</sup> The coordinates for Channel 257A at Charlotte Amalie are 18-21-25 North Latitude and 64-58-00 West Longitude.

<sup>2</sup> The coordinates for Channel 258A at Frederiksted are 17-42-48 North Latitude and 64-53-00 West Longitude.

<sup>3</sup> The coordinates for Channel 293B at Christiansted are 17-44-07 North Latitude and 64-40-46 West Longitude.

<sup>4</sup> The FM Table of Allotments is corrected to read Channel 228B1 in lieu of Channel 228B at Christiansted. This action constitutes an editorial change in the Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b)(A) and (B).

Act of 1934, as amended, JKC Communications of the Virgin Islands, licensee of Station WVIQ-Christiansted, Virgin Islands, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 293B, as proposed herein instead of the present Channel 258B.

7. Pursuant to Section 1.87 of the Commission's Rules, JKC Communications of the Virgin Islands may, not later than July 24, 2000, file a written statement showing with particularity why their individual license should not be modified as proposed in the Order to Show Cause. The Commission may call on JKC Communications of the Virgin Islands to furnish additional information. If JKC Communications of the Virgin Islands raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, JKC Communications of the Virgin Islands will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

JKC Communications of the Virgin Islands  
Post Office Box 4084  
Christiansted, Virgin Islands 00822  
(Licensee of Station WVIQ-FM)

9. 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.

10. Interested parties may file comments on or before July 24, 2000, and reply comments on or before August 8, 2000, 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:

James L. Oyster  
108 Oyster Lane  
Castleton, Virginia 22716-2839  
(Counsel to petitioner)

11. 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.

12. 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 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, at its headquarters, 445 12th Street, S.W., Washington, D.C.