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

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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	MM Docket No. 00-226
FM Broadcast Stations.	)	RM-10001
(Fair Bluff, North Carolina, Litchfield Beach,	)	
Johnsonville and Olanta, South Carolina)	)	
	)	

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NOTICE OF PROPOSED RULE MAKING

Adopted: October 25, 2000 **Released:** November 3, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a joint petition for rule making filed by Atlantic Broadcasting Co., Inc., permittee of Station WSIM, Channel 287C3, Fair Bluff, North Carolina, and The Waccamaw Neck Broadcasting Company, licensee of Station WPDT, 286A, Johnsonville, South Carolina ("petitioners"). Petitioners request the reallotment of Channel 287C3 from Fair Bluff, North Carolina, to Litchfield Beach, South Carolina, as the community's first local aural transmission service, and the reallotment of Channel 286A from Johnsonville, South Carolina, to Olanta, South Carolina, as the community's first local aural transmission service.

2. In support of the petition for rule making, petitioners state that the reallotments would serve the public interest and result in a preferential arrangement of allotments. They state that the proposed communities qualify for allotment purposes and that they are each deserving of a first local aural transmission service. With respect to Station WSIM, they state that the station is not on the air and therefore would not represent a loss of existing service. With respect to Station WPDT, they argue that the station has not broadcast a regular signal since 1997, but that it has been on the air for short periods strictly to avoid a loss of the broadcast license in accordance with Section 312(g) of the Communications Act of 1934, as amended and Section 73.1740(c) of the Commission's Rules.

3. In support of their proposal for Litchfield Beach, petitioners state that Litchfield Beach has many indicia of a community. Although it is neither incorporated nor a Census Designated Place, based on a local county analysis, it has an estimated population of 3,840 persons, and it has a defined center and substantial commercial core. Petitioners note that the State of South Carolina estimates that its population is 2,213 persons. Petitioners provide other evidence of Litchfield Beach's status as a community, such as declarations of residents, business owners and other members of the community and internet searches showing a large number of businesses which identify themselves with the community. Finally, petitioners state that since the station is not on the air, there would be no actual loss of existing service.

4. In support of their proposal for Olanta, petitioners state that Olanta is listed in the 1990 U.S. Census and attributed with a U.S. Census population of 532 persons. They state that there are many businesses in Olanta, including the Olanta Fabric Shop, Olanta Floor Covering, Olanta Hardware Co., Olanta Motel, and the Olanta Movie Club. Olanta has its own zip code, elementary school, and churches. It is not part of an Urbanized area. Therefore, petitioners argue that Olanta is a community for allotment purposes. Petitioners note that Channel 286A is the only aural broadcast channel allotted to Johnsonville.

However, petitioners state that Johnsonville and the entire loss area occasioned by the change of community would continue to receive at least five fulltime reception services. They claim that the overall gain in population served by the instant proposal is 37,015 persons, which represents a 30.9% gain in population served by the proposed facilities over the existing facilities.

5. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "among the several states and communities." The Commission has defined a community as a geographically identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes.[1] In the past, we have found that a place does not constitute a community for allotment purposes where it lacks the customary factors associated with determining community status, such as a local government, library, schools, shopping centers, churches, a newspaper and social or civic organizations.

6. Based on the information supplied by petitioners, we are unable to determine that either Litchfield Beach or Olanta is a community for allotment purposes. Litchfield Beach is neither incorporated nor recognized by the U.S. Census, and even petitioner could not determine a definitive population count. In addition, Litchfield Beach has no governmental organizations or services, such as police or fire department. Olanta is listed in the U.S. Census, but is not incorporated and also has no governmental organizations or services. Petitioner's search of the internet is not sufficient to establish a community's status as a community. Therefore, petitioners are requested to provide further information to establish that Litchfield Beach and Olanta are communities for allotment purposes.

7. Based on the information before us, we are also unable to determine whether petitioners' proposal to reallot Channel 286A from Johnsonville to Olanta would result in a preferential arrangement of allotments. Our initial analysis shows that while petitioners' proposal would provide a first local aural service to Olanta, it would be accomplished at the expense of Johnsonville a larger community with a 1990 U.S. Census population of 1,541 persons, losing its sole local aural broadcast service. We recognize that *Modification of FM and TV Authorizations to Specify a New Community of License* ("*Change of Community R&O*"),[2] states that a waiver of the prohibition on the removal of a community's sole local broadcast service will be considered in the rare circumstances where removal of a local service might serve the public interest, such as where the new allotment would provide a first reception service to a significantly sized population.[3] However, in that case the Commission also stated that the public interest is not served by removing a community's sole local transmission service only to provide such a service to another community. The reallotment proposal must serve the Commission's policies and priorities.[4, 5] In

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1 *See Pleasant Dale, Nebraska*, 14 FCC Rcd 18893 (1999), *Avon, North Carolina*, 14 FCC Rcd 3939 (1999) and *Thermal, California*, 15 FCC Rcd 2100 (2000).

2 4 FCC Rcd 4870 (1989), *recon. granted in part,(Change of Community MO&O"),* 5 FCC Rcd 7094 (1990).

3 *Change of Community MO&O,* 5 FCC Rcd at 7096.

4 The FM priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. The second and third priorities are accorded co-equal weight. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)

addition, the Commission stated that "the public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both."[6]

8. In this case, petitioners propose to allot Channel 286A to Olanta as a first local aural transmission service. They argue that because Station WPDT has not transmitted on a regular basis, it should not be considered an operating station because the public has not come to rely on its signal. Petitioners note that The Waccamaw Neck Broadcasting Company has found a buyer for the station who is interested in moving the station to Olanta. They also note that the entire gain area is well served by five or more existing services. We would consider Station WPDT to be an operating station based on petitioners' showing, and, as petitioners have also shown, the gain area is well served. Therefore, the only public interest benefit evident from the petition is the provision of a first local aural transmission service to Olanta. We note that the Commission has stated that it does not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission service to another community.[7] Therefore, in order to evaluate this proposal, we request that petitioner provide information on any other public interest benefit which would justify its grant.

9. A preliminary engineering analysis shows that Channel 287C3 can be allotted at Litchfield Beach in accordance with the Commission's minimum distance separation requirements and principal community coverage requirements at petitioner's requested site 0.4 kilometers (0.3 miles) South of the community.[8] Our engineering analysis also shows that Channel 286A can be allotted at Olanta in accordance with the Commission's minimum distance separation requirements and principal community coverage requirements at petitioner's requested site 4.9 kilometers (3.0 miles) East of the community.[9]

10. 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:

(Continued from previous page)

5 *See Report and Order in* MM Docket No. 98-22 (Deruyter and Chittenango, New York), 13 FCC Rcd. 4332 (1998).

6 *Change of Community MO&O,* 5 FCC Rcd at 7097.

7 *See Ardmore, Oklahoma, and Sherman, Texas*, 6 FCC Rcd 7006 (1991) and *Llano and Marble Falls, Texas*, 10 FCC Rcd 4913 (1995).

8 The coordinates for Channel 287C3 at Litchfield Beach are 33-27-47 NL and 79-06-05 WL.

9 The coordinates for Channel 286A at Olanta are 33-55-38 NL and 79-52-41 WL.

City	Channel No. Present	Channel No. Proposed
Fair Bluff, North Carolina	287C3	----
Litchfield Beach, South Carolina	----	287C3
Johnsonville, South Carolina	286A	----
Olanta, South Carolina	----	286A

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 December 26, 2000, and reply comments on or before January 10, 2001, 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:

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

14. For further information on this proceeding contact Victoria M. McCauley, 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.