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Before the
Federal Communications Commission

2001 FEB 12 P Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	RECEIVED
FM Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Caro and Cass City, Michigan))	MM Docket No. 01-33 ✓
)	RM-10060
)	
(Warsaw and Windsor, Missouri))	MM Docket No. 01-34
)	RM-10061

NOTICE OF PROPOSED RULE MAKING

Adopted: January 31, 2001

Released: February 9, 2001

Comment Date: April 2, 2001

Reply Comment Date: April 17, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to allot new channels in four separate localities. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, Edwards Communications, L.C., licensee of Station WIDL(FM) Caro, Michigan, and D&H Media, permittee of Station KWKJ(FM), Warsaw, Missouri, states that it will file an application for construction permit at each locality to effectuate the change of community if the channel is reallocated. 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 combining 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. 01-33; RM-10060

Petitioner: Edwards Communications, L.C.
 C/O John S. Neely
 Miller and Miller, P.C.
 P. O. Box 33003
 Washington, DC 20033

Proposal: Substitute Channel 221C3 for Channel 221A at Caro, Michigan, reallocate Channel 221C3 from Caro to Cass City, Michigan, as the community's first local transmission service, and modify Station WIDL's authorization to specify Cass City as the community of license.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Caro, Michigan	221A	---
Cass City, Michigan	---	221C3

Coordinates: 48-38-20 NL and 83-08-38 WL

Additional Information: Channel 221C3 can be substituted for Channel 221A at Caro, Michigan, and reallocated from Caro to Cass City at petitioner's requested site 4.9 kilometers (3.0 miles) northeast of the community. A preliminary engineering analysis shows that there is a gain area with a population of 37,994 persons. Our analysis also shows that all of the loss area is well served, and the gain area includes areas that will receive a third, fourth, and fifth service. In addition, Caro will continue to receive local transmission service from Station WKYO(AM). No urbanized areas are involved. Canadian concurrence will be requested for this allotment.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

B. MM Docket No. 01-34; RM-10061

Petitioner: D&H Media
C/O Howard J. Barr
Pepper and Corazzini, LLP
1776 K Street, N.W. Suite 200
Washington, DC 20006-2334

Proposal: Reallocate Channel 253A from Warsaw to Windsor, Missouri, as the community's first local transmission service, and modify Station KWKJ's authorization to specify Windsor as the community of license.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Warsaw, Missouri	249A, 253A	249A
Windsor, Missouri	---	253A

Coordinates: 38-31-56 NL and 93-31-19 WL

Additional Information: Channel 253A can be reallocated from Warsaw to Windsor, Missouri, without a site restriction. The community will continue to receive local transmission service from Station KAYQ(FM). No urbanized areas are involved. A preliminary engineering analysis shows that from the proposed transmitter site, there is a gain in population to 27,107 persons. Our analysis also shows that from petitioner's site, the loss area includes no white or gray area but does include an area with a population of 1,347 persons that will be left with two reception services, and area with a population of 4,633 persons that will be left with three reception services and area with a population of 1,861 persons that will be left with four reception services. We also note that the gain area includes an area with a population of 3,873 persons who will receive a fourth reception service.

Petitioner is requested to address the issue of underserved loss areas and provide information in support of the public interest benefit in the change of community.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

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 April 2, 2001, and reply comments on or before April 17, 2001, 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 a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 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).

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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket 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 Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington D.C. 20554.