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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,	)	
FM Broadcast Stations.	)	
(Salem and Mollalla, Oregon)	)	MM Docket No. 01-59
	)	RM-10072
	)	
(Avon and Fairport, New York)	)	MM Docket No. 01-60
	)	RM-10073

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NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 2001 **Released: March 2, 2001**

Comment Date: April 23, 2001
Reply Date: May 8, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, Entercom Portland, LLC, licensee of Station KRSK(FM), Salem, Oregon, and Entercom Rochester, LLC, licensee of Station WBBF-FM, Avon, New York, states that it will file an application for construction permit to effectuate the modification at each locality. 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. 01-59; RM-10072

Petitioner: **Entercom Portland License LLC**
C/O Brian M. Madden
Leventhal, Senter, & Lerman
Suite 600
Washington, DC 20006-1809

Proposal: Reallot Channel 286C from Salem to Mollalla, Oregon, as the community's first local aural transmission service, and modify station KSRK(FM)'s license to specify Mollalla as its community of

license.

Community	Present	Proposed
Salem, Oregon	286C	---
Mollalla, Oregon	---	286C

Coordinates: 45-00-35NL and 122-20-17 WL

Additional Information: Channel 286C can be reallotted from Salem to Mollalla without a site restriction. Petitioner states that there is no change of transmitter site and therefore no gain or loss in area or population. Salem will continue to be served by three full-time AM stations. Petitioner notes that the proposal will continue to provide a city-grade signal to over 50% of the Portland-Vancouver Urbanized Area, and the Salem, Oregon Urbanized Area. It argues that because the reallotment involves no site change and it is providing the same amount of coverage to those Urbanized Areas,[1] the Commission does not require an analysis of the communities pursuant to the policies enumerated in *Faye and Richard Tuck.*[2] We agree. Since petitioner is not proposing to change its transmitter site and already provides city-grade coverage to over 50% of the Salem Oregon and Portland-Vancouver Urbanized Areas, we do not believe that the proposal constitutes a migration to urbanized areas warranting application of the *Tuck* policy.

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

B. MM Docket No. 01-60; RM-10073

Petitioner: **Entercom Rochester License LLC**
C/O H. Anthony Lehv
Leventhal, Senter, & Lerman
Suite 600
Washington, DC 20006-1809

Proposal: Reallot Channel 227A from Avon, to Fairport, New York, as the community's first local aural transmission service, and modify Station WBBF-FM's license to specify Fairport as its community of license.

Community	Present	Proposed
Avon, New York	227A	---
Fairport, New York	--	227A

Coordinates: 43-10-37 NL and 77-28-39 WL

Additional Information: Channel 227A can be reallotted from Avon to Fairport, New York at petitioner's requested site 9.2 kilometers (5.7 miles) north of the community. Canadian concurrence has been requested for the allotment. In support of its proposal, petitioner states that not only would its proposal

[1] Petitioner cites to *Moncks Corner, Kiawah Island and Sampit, South Carolina,* 15 FCC Rcd 8973, 9892 (2000), and *East Los Angeles, Long Beach and Frazier Park, California,* 10 FCC Rcd 2864, 2868 (1995).

[2] 3 FCC Rcd 5374, 5378 (1988).

provide a first local aural transmission service to the community but also will provide an additional reception service to 390,146 persons. Petitioner states that Fairport is a community for allotment purposes, and that it is within but independent of the Rochester Urbanized Area for purposes of the Commission's analysis of the reallotment pursuant to its holding in *Faye and Richard Tuck*.[3] With respect to those factors, petitioner states that its proposed 70 dBu signal would encompass 65% of the Rochester Urbanized Area, that Fairport's population is 5,943 persons, or 2.5% of Rochester's population of 231,636, and that it is not interdependent on the larger community based on a majority of the eight factors outlined by the Commission.[4]

In support of the independence of Fairport, petitioner states that Fairport was incorporated in 1867 and has a 1990 U.S. Census population of 5,943 persons. Petitioner addresses the eight *Tuck* factors. It points out that Fairport has a variety of industries and businesses, including the school district, which provide employment opportunities for local residents (Factor 1), but does not indicate the extent to which the residents work in the local community as opposed to the larger metropolitan area. It states that Fairport is served by two local public-access cable channels which focus on reporting local events, as well as a weekly newspaper (Factor 2). It states that the community leaders view the community as a separate entity from the larger community as evidenced by a website created by local government officials. (Factor 3). However, it has not included affidavits from community leaders or residents on this issue. It has an elected mayor and five-member Village Board who oversee community services and departments such as the Department of Public Works, Fairport Electric, a municipally-owned power company, the Fairport Municipal Commission, the Fairport Planning Board, the Zoning Board of Appeals, and the Fairport Urban Renewal/Industrial Development Agency Board. Fairport has its own court system, with a Village Clerk, Village Justice, Village Attorney, and also has its own taxing authority (Factor 4). In addition, it has its own zip code and post office (Factor 5), but no mention of the telephone book is made. Petitioner also states that the Fairport area is home to over 1,200 businesses, a number of medical and dental facilities, and that there are over 100 members in the Perinton-Fairport Chamber of Commerce (Factor 6). It has its own police and fire departments, public park, recreational facilities, swimming pool, its own schools and public library, and has over twenty religious institutions (Factor 8). Petitioner did not address factor (7). While petitioner has presented a good deal of information, we ask petitioner to provide additional information, such as more information regarding the local employment of residents and statements from local leaders to establish that they view the community as a separate entity.

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

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[3] *See* 3 FCC Rcd 5374, 5378 (1988). Unlike the preceding case, this one requires a *Tuck* showing because the proposed community of license is located within an urbanized area.

[4] These factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378.

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 23, 2001** and reply comments on or before, **May 8, 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.