

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.)	
)	
(Grants, Milan, and Shiprock, New Mexico)	)	MM Docket No. 01-118
	)	RM-10106
)	
(Van Wert and Columbus Grove, Ohio)	)	MM Docket No. 01-119
	)	RM-10127
)	
(Lincoln and Sherman, Illinois)	)	MM Docket No. 01-120 ✓
	)	RM-10126
)	
(Manning and Moncks Corner,	)	MM Docket No. 01-121
South Carolina)	)	RM-10125
)	
(Lebanon and Hamilton, Ohio and Fort Thomas,	)	MM Docket No. 01-122
Kentucky)	)	RM-10130

NOTICE OF PROPOSED RULE MAKING

Adopted: May 30, 2001

Released: June 8, 2001

Comments due: July 30, 2001

Reply comments due: August 14, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a multiple docket *Notice of Proposed Rule Making* setting forth four 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. Each petitioner states that it will file an application for construction permit at each locality and effectuate the change of community if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹

¹ See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

3. 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. [01-118] RM-10106

Petitioner: KXXQ Radio Partners, Inc. ("KXXQ")
C/O Robert Lewis Thompson
Hiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Proposal: KXXQ, licensee of Station KXXQ(FM), Grants, New Mexico, proposes to substitute Channel 264C0 for Channel 264A at Grants, New Mexico, reallocate Channel 264C0 from Grants to Milan, New Mexico, and modify the license for Station KXXQ(FM) to reflect the changes. It also proposes to substitute Channel 299C1 for vacant Channel 265C1 at Shiprock, New Mexico to accommodate the changes.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Grants, New Mexico	224C2, 264A, 279C, 288C		224C2, 279C, 288C
Milan, New Mexico	-----		264C0
Shiprock, New Mexico	265C1		299C1

Coordinates: Coordinates for Channel 264C0 at Milan are 35-2-19 NL and 107-56-52 WL. Coordinates for Channel 299C1 at Shiprock are 36-46-12 NL and 108-42-49 WL.

Additional Information: KXXQ notes that the reallocation will not deprive Grants of its sole local aural transmission service and it will provide Milan with its second local aural transmission service and its first competitive service. No urbanized areas are involved. We seek comment on the relative population gains and losses resulting from the reallocation.

Channel 264C0 can be allotted at Milan with a site restriction of 21.2 kilometers (13.2 miles) north of the community. Channel 299C1 can be allotted at Shiprock at the original allotment site. Petitioner pledges to reimburse the eventual permittee at Shiprock for any costs associated with substituting Channel 299C1 for Channel 265C1 at that community.

FCC Contact: Victoria McCauley (202) 418-2180

B. MM Docket No. [01-119] RM-10127

Petitioner: Clear Channel Broadcasting Licenses, Inc. ("Clear Channel")
C/O Marissa G. Repp
F. William LeBeau
Hogan & Hartson
555 Thirteen Street, NW
Washington, DC 20004-1109

Proposal: Clear Channel, permittee of an unconstructed FM station at Van Wert, Ohio, proposes to substitute Channel 230B1 for Channel 230A at Van Wert, reallocate the channel to Columbus Grove, Ohio, as the community's first local aural transmission service, and modify its construction permit to reflect the changes.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Van Wert, Ohio	230A, 255B		255B
Columbus Grove, Ohio	----		230B1

Coordinates: Coordinates for Channel 230B1 at Columbus Grove are 40-57-33 NL and 84-08-14 WL.

Additional Information: This proposal will not deprive Van Wert of its only aural transmission service and will provide a first local service to Columbus Grove. In support of its petition, Clear Channel includes information regarding the independent community status of Columbus Grove, Ohio, in the context of *Faye and Richard Tuck*,² although it notes that Columbus Grove is not in any urbanized area.³ It states that Columbus Grove has its own city government, with an elected mayor, village council and police department. It has a water and sewage department, a public affairs office, school district and library. In addition, it has its own zip code and post office. Finally, it has a weekly newspaper, medical establishments and businesses. We seek comment on the relative population gains and losses resulting from the reallocation.

Channel 230B1 can be allotted at Columbus Grove with a site restriction of 8.1 kilometers (5.0 miles) northwest of the community. This proposal is within 320 kilometers of the Canadian border. Therefore, Canadian concurrence will be requested for this allotment.

FCC Contact: Victoria McCauley (202) 418-2180

C. MM Docket No. [01-120] RM-10126

Petitioner: Saga Communications of Illinois, Inc. ("Saga")
C/O Gary S. Smithwick
Smithwick and Belendiuk
5028 Wisconsin Ave., N.W. Suite 301
Washington, DC 20016

Proposal: Reallocate Channel 230B1 from Lincoln, Illinois to Sherman, Illinois and modify the license of Station WMHX(FM) to reflect the change of community.

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Lincoln, Illinois	230B1		----
Sherman, Illinois	----		230B1

Coordinates: Coordinates for Channel 230B1 at Sherman, Illinois are 40-00-09 NL and 89-39-35 WL.

² See 3 FCC Rcd 5374 (1988).

³ Our initial analysis shows that the proposed site for Channel 230A at Columbus Grove will provide a 70dBu signal to 22% of the Lima, Ohio Urbanized Area.

Additional Information: In support of its petition, Saga includes information regarding the community status of Sherman Illinois. It states that Sherman is listed in the U.S. Census and has a 1990 population of 2,080 persons. It has an elected mayor and board of trustees, its own post office and zip code, elementary school, local phone directory, police department, churches, medical professionals, and businesses. We seek comment on the relative population gains and losses resulting from the reallocation.

Channel 230B1 can be allotted at Sherman, Illinois, at petitioner's requested site 13 kilometers (8.1 miles) north of the community.

FCC Contact: Victoria McCauley (202) 418-2180

D. MM Docket No. [01-121] RM-10125

Petitioner: Cumulus Licensing Corp. ("Cumulus")
 David D. Burns
 Kathrine L. Calderazzi
 Paul, Hastings, Janofsky & Walter
 1299 Pennsylvania Ave., N.W. Tenth Floor
 Washington, DC 20004-2400

Proposal: Reallot Channel 223C from Manning to Moncks Corner, South Carolina, and modify the license of Station WHLZ to reflect the change of community.

<u>Community</u>		<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Manning, South Carolina	223C		----	
Moncks Corner, South Carolina		----		223C

Coordinates: Coordinates for Channel 223C at Monck's Corner are 33-32-05 NL and 79-59-15 WL.

Additional Information: In support of its petition, Cumulus states that the community of Moncks Corner is incorporated and has a 1990 U.S. Census population of 5,607 persons. Since Moncks Corner currently has an AM Daytime-only station, Cumulus notes that this reallocation would provide the community with its first full-time station and first FM station. Cumulus is requested to provide additional information on the community status of Moncks Corner. Since there is no change of transmitter site, there are no population gains or losses from this reallocation.

Channel 223C can be allotted at Cumulus's existing site 37.7 kilometers (23.4 miles) north of the community. We also note that this site is short spaced due to Station WMYB(FM)'s (Channel 221C2, Myrtle Beach, South Carolina), use of Section 73.215 processing toward Station WHLZ. Cumulus states that since this case involves no change of transmitter site and no increase of short spacing, the ruling in *Report and Order* in MM Docket No. 98-176 (Killeen and Cedar Park, Texas)⁴ allowing such a change of community should apply. We seek comment on this issue.

FCC Contact: Victoria McCauley (202) 418-2180

⁴ 15 FCC Rcd 1945 (2000).

E. MM Docket No. [01-122] RM-10130

Petitioners: **Infinity Radio License Inc. (“Infinity”)**
 c/o John D. Poutasse
 2000 K Street, N.W. Suite 600
 Washington, DC 20006-1809

Caron Broadcasting (“Caron”)
 c/o James P. Riley
 Fletcher, Heald and Hildreth
 1300 N. 17th Street, 11th Floor
 Arlington, VA 22209-3801

Proposal: Infinity, licensee of Station WAQZ(FM), Lebanon, Ohio, requests the reallocation of Channel 247A from Lebanon, Ohio to Fort Thomas, Kentucky as the community’s first local aural transmission service, and the modification of Station WAQZ’s license to reflect the change. Caron, licensee of Station WYGY(FM), Hamilton, Ohio, requests the reallocation of Channel 243B from Hamilton to Lebanon and the modification of its license to reflect the change.

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Hamilton, Ohio	243B, 278B	278B
Lebanon, Ohio	247A	243B
Fort Thomas, Kentucky	----	247A

Coordinates: Coordinates for Channel 247A at Fort Thomas, Kentucky, are 39-11-51 NL and 84-22-56 WL. Coordinates for Channel 243B at Lebanon, Ohio, are 39-21-11 NL and 84-19-30 WL.

Additional Information: In support of the proposals, Infinity and Caron note that the result of this combination of reallocations will be that neither Hamilton nor Lebanon will be deprived of its sole local service and Fort Thomas will receive its first local aural transmission service. With respect to the community status of Fort Thomas, they state that it was incorporated in 1867 and had a 1990 U.S. Census population of 16,032 persons. They also claim that while Fort Thomas is wholly within the Urbanized Area of Cincinnati, Ohio, it is independent of the Cincinnati Urbanized Area and give information to show its independence based on the factors listed in *Faye and Richard Tuck*⁵ They also give information on population gains and losses from the reallocation. We seek comment on these issues.

With respect to the reallocation of Channel 243B from Hamilton to Lebanon and the modification of Station WYGY(FM), they note that no technical changes to the facility are proposed. They thus claim that the proposal is fully spaced based on Section 73.213(a) of the Commission’s Rules regarding “pre-1964” grandfathered short-spaced stations under Section 73.207 of the rules.⁶ We seek comment on this issue.

Channel 247A can be allotted at Fort Thomas at petitioner’s requested site 14.7 kilometers (9.1 miles) north of Fort Thomas. Channel 243B can be reallocated from Hamilton to Lebanon at Station WYGY(FM)’s existing site 13.9 kilometers (8.6 miles) southwest of the community.

FCC Contact: Victoria McCauley (202) 418-2180.

⁵ 3 FCC Rcd 5374 (1988).

⁶ Citing *Report and Order* in MM Docket No. 90-138 (Newnan and Peachtree City, Georgia), 7 FCC Rcd 6307 (1992); *Report and Order* in MM Docket No. 99-216 (Oceanside and Encinitas, California), 14 FC Rcd 15303 (1999); *Report and Order* in MM Docket No. 99-170 (Berlin and North Conway, New Hampshire), 14 FCC Rcd 15307 (1999).

4. 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.

5. Interested parties may file comments on or before July **30, 2001**, and reply comments on or before **August 14, 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.

6. 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).

7. 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 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. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (*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.