

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

2001 OCT -5 A 11:40

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| In the Matter of                          | ) |                      |
|   | ) |                      |
| Amendment of Section 73.202(b),           | ) | MM Docket No. 99-244 |
| Table of Allotments,                      | ) | RM-9678              |
| FM Broadcast Stations.                    | ) | RM-9873              |
| (Cumberland, Kentucky and Weber City,     | ) |                      |
| Virginia; Glade Spring, Marion, Richlands | ) |                      |
| and Grundy, Virginia)                     | ) |                      |

FILED

**ORDER TO SHOW CAUSE**  
**(CORRECTED)**

**Adopted: October 24, 2001**

**Released: November 2, 2001**

By the Chief, Allocations Branch:

1. The Allocations Branch, at the request of Cumberland City Broadcasting Company, issued a Notice of Proposed Rule Making, 14 FCC Rcd 10545 (1999), proposing the substitution of 274C3 for Channel 274A at Cumberland, Kentucky, the reallocation of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station WSEH(FM)'s license accordingly.<sup>1</sup> In response to the Notice, a Counterproposal was filed by Holston Valley Broadcasting Corporation ("Holston") proposing the allotment of Channel 274A at Glade Spring, Virginia.<sup>2</sup> To accommodate the allotment, Holston also proposed (a) the substitution of Channel 263A for Channel 273A at Marion, Virginia, and the modification of Station WOLD-FM's license accordingly; (b) the substitution of Channel 249A for Channel 264A at Richlands, Virginia, and the modification of Station WRIC-FM's license accordingly; and (c) the substitution of Channel 264A for Channel 249A at Grundy, Virginia, and the modification of Station WMJD(FM)'s license accordingly. Holston also suggested that Channel 274A remain licensed to Cumberland, Kentucky to accommodate its proposal.

2. In order for us to proceed with our analysis of the upgrade and change of community at Weber City, Virginia, it is necessary to issue an Order to Show Cause to Virginia-Kentucky Broadcasting Co., licensee of Station on WMJD(FM) in Grundy, Virginia, why its license should

<sup>1</sup> The communities of Glade Spring, Marion, Richlands and Grundy, Virginia have been added to the caption.

<sup>2</sup> Public Notice of the Counterproposal was given on May 15, 2000, Report No. 2411 (RM-9873).

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, Virginia-Kentucky Broadcasting Co., 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.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to Show Cause to the following:

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| Emerald Sound, Inc.<br>Post Office Box 31<br>Marion, Virginia 24354<br>(Licensee of Station WOLD-FM)) | Peggy Sue Broadcasting Corp.<br>137 Oriole Avenue<br>Princeton, West Virginia 24740<br>(Licensee of Station WRIC-FM) |
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Virginia-Kentucky Broadcasting Co.  
Post Office Box 2045  
Grundy, Virginia 24614  
(Licensee of Station WMJD(FM))

7. 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.

8. 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

not be modified to specify operation on Channel 264A.<sup>3</sup> Holston states that the allotment of Channel 274A at Glade Spring also requires that Station WOLD-FM at Marion, Virginia modify its station to specify operation on Channel 263A. However, since Holston advises that the licensee of Station WOLD-FM has agreed to modify its channel, and we note that the licensee of Station WRIC-FM has also submitted comments consenting to modify its channel, this Order is not applicable. Holston Valley Broadcasting Corporation has stated its intent to reimburse Stations WRIC-FM and WMJD(FM) for their reasonable expenses incurred in connection with the change in frequencies. We will not accept any additional counterproposals because an opportunity has already been provided for the filing of such proposals. Further, although this Order affords Station WMJD(FM) an opportunity to object to the proposed channel changes, it does not afford an additional opportunity to comment on the merits of the proposal set forth in the Notice of Proposed Rule Making or the proposal advanced in the Counterproposal. See Angola, Indiana, et al. 5 FCC Rcd 200 (1990).

3. An engineering analysis has determined that Channel 274A can be allotted to Glade Spring in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) east to avoid a short-spacing to the licensed site of Station WVSR-FM, Channel 274B, Charleston, West Virginia.<sup>4</sup> Additionally, to accommodate the allotment, Channel 263A can be substituted at Marion at petitioner's requested site;<sup>5</sup> Channel 249A can be substituted at Richlands at Station WRIC-FM's presently licensed site;<sup>6</sup> and Channel 264A can be substituted at Grundy at Station WMJD(FM)'s presently licensed site.<sup>7</sup>

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Virginia-Kentucky Broadcasting Co, licensee of Station WMJD(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 264A.

5. Pursuant to Section 1.87 of the Commission's Rules, Virginia-Kentucky Broadcasting Co. may, not later than December 24, 2001, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Virginia-Kentucky Broadcasting Co., to furnish additional information. If, Virginia-Kentucky Broadcasting Co. raises a substantial and material question of fact, a hearing may be

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<sup>3</sup> We previously released an Order to Show Cause (DA 01-2377) in this proceeding, which was rescinded by an Order (DA 01-2449) due to an assignment of license of one of the stations involved. This document constitutes a corrected Order to Show Cause.

<sup>4</sup> The coordinates for Channel 274A at Glade Spring are 36-45-15 North Latitude and 81-37-56 West Longitude.

<sup>5</sup> The coordinates for Channel 263A at Marion are 36-51-23 North Latitude and 81-30-21 West Longitude.

<sup>6</sup> The coordinates for Channel 249A at Richlands are 37-09-04 North Latitude and 81-53-56 West Longitude.

<sup>7</sup> The coordinates for Channel 264A at Grundy are 37-18-08 North Latitude and 82-07-04 West Longitude.

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