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Federal Communications Commission

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

APR - 2 2002

FCC - MAILROOM

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(De Funiak Springs and Valparaiso, Florida))

MM Docket No. 02-62
RM-10397

NOTICE OF PROPOSED RULE MAKING

Adopted: March 13, 2002

Released: March 22, 2002

Comment Date: May 13, 2002

Reply Comment Date: May 28, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed on behalf of Root Communications License Company, L.P. ("Petitioner"), licensee of Station WMXZ(FM), Channel 276C2, De Funiak Springs, Florida. Petitioner seeks to amend the FM Table of Allotments by reallocating Channel 276C2 from De Funiak Springs to Valparaiso, Florida, and modifying Station WMXZ's authorization accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Petitioner explains that the requested reallocation from De Funiak Springs to Valparaiso is mutually exclusive with Station WMXZ's existing authorization.

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982),² by providing Valparaiso (population 6,408)³ with its

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

³ Population figures for Valparaiso and De Funiak Springs are taken from the 2000 U.S. Census. Valparaiso is an incorporated city that has its own local government and provides its residents with extensive municipal services.

first local FM transmission service.⁴ We note that the reallocation of Channel 276C2 to Valparaiso would not deprive De Funiak Springs (population 5,089) of its sole local transmission outlet, because De Funiak Springs would continue to be served by AM Stations WGTX and WZEP, as well as noncommercial educational FM Station WAKJ. Since Petitioner intends to utilize its present transmitter site for the reallocation of Channel 276C2 to Valparaiso, there are no gain or loss areas associated with this proposal.⁵

4. Since Petitioner’s reallocation request is consistent with the provisions of Section 1.420(i) of the Commission’s Rules, we shall propose to modify the authorization of Station WMXZ without entertaining competing expressions of interest in the use of Channel 276C2 at Valparaiso, Florida, or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

5. Channel 276C2 can be allotted to Valparaiso, Florida, consistent with the technical requirements of the Commission’s Rules, at Petitioner’s specified site, utilizing coordinates 30-30-53 NL and 86-13-12 WL.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
De Funiak Springs, Florida	276C2	-----
Valparaiso, Florida	-----	276C2

7. 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.

⁴ Petitioner asserts that Valparaiso-Niceville is the community of license for AM broadcast Station WFSH.

⁵ Petitioner’s 70 dBu contour presently covers 53 percent of the Fort Walton Beach, Florida, Urbanized Area and will continue to provide the same coverage when its city of license is changed to Valparaiso. Further, Petitioner is not proposing to provide a first local transmission service to Valparaiso. Therefore, Petitioner need not provide a showing of Valparaiso’s independence from Fort Walton Beach pursuant to the standards set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

8. Interested parties may file comments on or before May 13, 2002, and reply comments on or before May 28, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Howard M. Lieberman, Esq.
Elizabeth A. Hammond, Esq.
Arter and Hadden, LLP
1801 K Street, N.W.
Third Floor, L Street Entrance
Washington, D.C. 20006

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

10. For further information concerning this proceeding, contact R. Barthen Gorman, 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 that 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 contained 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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent 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 Procedures. 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 proposal 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 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 (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.