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Federal Communications Commission

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

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 02-76  
Table of Allotments, ) RM-10405  
FM Broadcast Stations. )  
(Crisfield, Maryland) )

NOTICE OF PROPOSED RULE MAKING

Adopted: April 3, 2002

Released: April 12, 2002

Comment Date: June 3, 2002

Reply Comment Date: June 18, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein a petition for rule making filed on behalf of Bay Broadcasting, Inc. ("Petitioner"), proposing the substitution of Channel 250A for Channel 245A at Station WBEY(FM) at Crisfield, Maryland.<sup>1</sup> Petitioner states that it operates Station WBEY on Channel 245A with 2.8 kilowatts effective radiated power and 123 meters antenna height above average terrain and is short-spaced to Station WCEI-FM, Easton, Maryland. It claims that operating on Channel 245A, Station WBEY receives severe ducting interference from Station WFPG(FM), Atlantic City, New Jersey. By changing its frequency to Channel 250A, Petitioner's consulting engineer predicts that Station WBEY can avoid this ducting interference, be fully spaced with other FM allotments and stations, and be able to operate with maximum Class A FM facilities. Petitioner states that, if Channel 250A is allotted to Crisfield, Petitioner will promptly implement the change in channel and make the required technical modifications to change the operating frequency of Station WBEY from Channel 245A to Channel 250A.

2. A staff analysis has determined that Channel 250A can be allotted to Crisfield, Maryland, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the

<sup>1</sup> Petitioner's original Petition for Rule Making was returned as unacceptable for filing because the proposal did not provide 70 dBu coverage over the entire community of Crisfield. Subsequently, Petitioner filed a Petition for Reconsideration in which it requests that its petition for rule making be reinstated, or in the alternative, that a new transmitter site specified in Exhibit C of its Petition for Reconsideration be utilized in place of the originally specified transmitter site. We find our original determination that, operating from the originally proposed transmitter site, Station WBEY would not provide complete 70 dBu coverage of Crisfield, Maryland, was correct. Nevertheless, we are issuing this Notice of Proposed Rule Making in which the most recent transmitter site specified by Petitioner is utilized. Thus, the original Petition for Rule Making filed by petitioner is being reinstated as amended by Exhibit C of its Petition for Reconsideration. As a result of the issuance of this Notice of Proposed Rule Making, we are dismissing the Petition for Reconsideration as moot.

Commission's Rules at the site specified by Petitioner in its Petition for Reconsideration, with a site restriction of 15.3 kilometers (9.5 miles) southeast of Crisfield, Maryland. The coordinates for that site are: 37-55-13 NL and 75-41-59 WL. The Commission considers channels of the same class to be equivalent. Therefore, the channel change involved here does not represent an upgrade in facilities and no expressions of interest from parties other than Petitioner will be accepted.<sup>2</sup>

3. Since allotting Channel 250A to Crisfield, Maryland, could provide improved aural transmission service to Crisfield and areas surrounding that city, the Commission believes that it would serve the public interest to solicit comments on the possible allotment of Channel 250A to Crisfield, Maryland. 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 Crisfield, Maryland, as follows:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Crisfield, Maryland	245A	250A

4. 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.

5. Interested parties may file comments on or before June 3, 2002, and reply comments on or before June 18, 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; Room TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Law Office of  
Lauren A. Colby  
10 E. Fourth Street  
P.O. Box 113  
Frederick, Maryland 21705-0113

6. 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

<sup>2</sup> See Modification of FM and TV Licenses, 98 FCC 2d 916, 921-22 (1984) and Section 1.420(g) of the Commission's Rules.

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.

7. For further information concerning this proceeding, contact R. Barthen Gorman, 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  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
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 1.419 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 Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Room

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 Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C. 20554.