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

In the matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	
FM Broadcast Stations.	)	
(Meridianville, Tuscumbia, Carrollton, and	)	MB Docket No. 02-114
Gurley, Alabama)	)	RM-10426
	)	
(Monroe and Luna Pier, Michigan)	)	MB Docket No. 02-115
	)	RM-10427

NOTICE OF PROPOSED RULEMAKING

Adopted: May 1, 2002 **Released: May 17, 2002**

Comments Date: July 8, 2002
Reply Comment Date: July 23, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division 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 to 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 reallotment 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] In each case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallotment proposal, we compare the existing allotment to the proposed allotment to determine whether the reallotment will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.[2]

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

[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"*).

[2] The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1982).

rulemaking 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 by avoiding duplicative actions. We request comments and/or counterproposals for the following proposals:

A. MB Docket No. 02-114; RM-10426

Petitioners: **Capstar TX Limited Partnership and**
Clear Channel Broadcasting Licenses, Inc.,
c/o Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Proposal: Capstar TX Limited Partnership, licensee of Station WXQW(FM), Meridianville, Alabama, and Clear Channel Broadcasting Licenses, Inc., licensee of Stations WLAY-FM, Tuscumbia, Alabama, WZBQ, Carrollton, Alabama, jointly filed a petition for rulemaking to amend the FM Table of Allotments. They request the reallotment of Channel 231A from Meridianville, Alabama to Gurley, Alabama and modification of the license of Station WXQX(FM) to reflect the change of community. They also request the deletion of Channel 262C1 from Tuscumbia, Alabama, and allotment of Channel 262C2 at Meridianville, Alabama, and modification of the license of Station WLAY-FM to reflect the change of community. Last, they also request the downgrade of Station WZBQ(FM), Carrollton, Alabama, from Channel 231C to Channel 231C0 to accommodate the modification at Gurley.

	Channel	
Community	**Present**	**Proposed**
Carrollton, Alabama	231C	231C0
Gurley, Alabama	---	231A
Meridianville, Alabama	231A	262C2
Tuscumbia, Alabama	262C1	---

Coordinates: Coordinates for Channel C0 at Carrollton are 33-13-6 NL and 88-5-46 WL. Coordinates for Channel 231A at Gurley are 34-44-29 NL and 86-30-26 NL. Coordinates for Channel 262C2 at Meridianville are 34-49-06 NL and 86-44-16 WL.

Additional Information: This proposal will not deprive Tuscumbia of its only aural transmission service.[3] It will also provide a first local aural transmission service at Gurley, and upgrade the sole local aural transmission service at Meridianville. Therefore, it will satisfy priority three of the FM Allotment priorities.[4] In support of the petition, parties include sufficient information to satisfy community status at Gurley[5] and also include information concerning the independence of Meridianville. In addition, they

[3] Tuscumbia will continue to be served by Stations WVNA(AM) and WZZA(AM).

[4] *See* note 2, *supra*.

[5] The Town of Gurley (population 876 persons) was incorporated in 1890. It has an elected mayor/town council form of government, and provides its own police and fire protection, as well as water sewer and street maintenance. It has a post office branch, a library branch, and county elementary and middle schools within its town limits. It has several retail establishments, churches, and civic organizations.

note that there is no issue of coverage to an urbanized area because Station WXQW, which is proposing to relocate to Gurley, already covers 100% of the Huntsville, Alabama, Urbanized Area and will continue to do so. Further, Station WLAY which is proposing to move to Meridianville is relocating its transmitter site from a site within the Florence Urbanized Area to a community outside any urbanized area, but to a site from which it will place a 70dBu signal over 100% of the Huntsville Urbanized Area. Therefore, parties argue that neither relocation implicates the Commission's policy concerning the potential migration of stations from underserved rural areas to well-served urban areas.[6] However, with respect to Meridianville, they provide an analysis to prove its independence of the Huntsville Urbanized Area which appears sufficient to satisfy our criteria.[7] We seek comment on this issue.

We also seek comment on the relative population losses and gains of this proposal. Parties state that the reallotment of Channel 231A from Meridianville to Gurley will result in a net loss of service to 2,634 persons, while the reallotment of Channel 264C2 from Tuscumbia to Meridianville will result in a net gain of service to 51, 581 persons. All loss areas will continue to be well served with five or more aural services.

Channel 231A can be allotted at Gurley at a site 12.8 kilometers (8.0 miles) northwest of the community. Channel 262C2 can be allotted at a site 15.6 kilometers (9.7 miles) west of the community. Channel 231C0 can be allotted at Carrollton at Station WZBQ's licensed site.

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

B. MB Docket No. 02-115; RM-10427

Petitioner: **Cumulus Licensing Corporation**
c/o Mark N. Lipp
J. Thomas Nolan
Shook, Hardy & Bacon
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Proposal: Cumulus Licensing Corporation, licensee of Station WTWR(FM), Monroe, Michigan, requests that we reallot Channel 252A from Monroe, Michigan to Luna Pier, Michigan, as that community's first local aural transmission service, and modify the license of Station WTWR(FM) to reflect the change of community.

	Channel	
Community	**Present**	**Proposed**
Monroe, Michigan	252A	---
Luna Pier, Michigan	---	252A

Coordinates: 41-50-43 NL and 83-27-12 WL.

[6] *See Report and Order* in MM Docket 96-249 (St. Maries, Idaho, et al.) 14 FCC Rcd 17012, 17019 (1999).

[7] This analysis shows that Meridianville is a census designated place, and has a 2000 U.S. Census population of 4,117 persons. It has its own zip code and U.S. Post Office. It has municipal services, an airport, numerous businesses, churches, schools, and medical services.

Additional Information: This proposal will not deprive Monroe of its only aural transmission service and will provide a first local aural transmission service to Luna Pier.[8] Channel 252A can be allotted at Luna Pier at petitioner's transmitter site which is 4.7 kilometers (2.9 miles) northwest of the community. Luna Pier, 2000 U.S. Census population 1,483 persons, would receive its first local aural transmission service and Monroe would not be deprived of its sole local transmission service. Petitioner states that Luna Pier is a community for allotment purposes. In support of its community status, petitioner states that Luna Pier is an incorporated city with a zip code, post office, a mayor and city council, provides municipal services such as police, fire protection, waste water handling, zoning and permitting, street maintenance and leaf collection. It has an elementary school, a library, two churches, a medical clinic and numerous retail businesses.

Petitioner states that it has two preexisting short spacings, but they are not a bar to this change of community because they are grandfathered pursuant to Section 73.213 of the rules and the change of community is being implemented at petitioner's existing transmitter site.[9] We seek comment on this issue.

Channel 252A can be reallotted from Monroe to Luna Pier at petitioner's licensed site 4.7 kilometers (2.9 miles) northwest of the community.

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

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **July 8, 2002**, and reply comments on or before **July 23, 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 the petitioner's counsel, as listed above for each docket.

5. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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).

[8] Stations WEJY(FM), WJOF(FM) and WLLZ(AM) will remain in Monroe.

[9] Petitioner notes that its application (File No. BPH-20010322ABO) specifying a new transmitter site has been dismissed at its request.

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
Assistant Chief, Audio Division
Office of Broadcast License Policy
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.