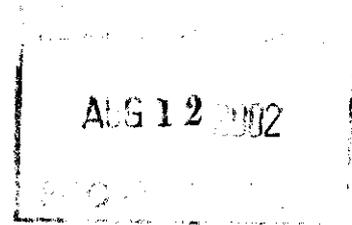


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Hilton Head Island, Hollywood and Port)	MB Docket No. 02-198 ✓
Royal, South Carolina))	RM-10513
)	
(Magnolia, Arkansas and Oil City,)	MB Docket No. 02-199
Louisiana))	RM-10514

NOTICE OF PROPOSED RULE MAKING

Adopted: July 17, 2002

Released: August 2, 2002

Comment Date: September 23, 2002

Reply Comment Date: October 8, 2002

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to allot new channels in 2 separate localities. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community and would fulfill priority three of the FM allotment priorities.¹ 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 proposal is filed 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 without affording other interested parties an opportunity to file competing expressions of interest.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 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 Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988)

² *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).

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. MB Docket No. 02-198; RM-10513

Petitioners:	Apex Broadcasting, Inc. c/o Erwin G. Krasnow Mark N. Lipp J. Thomas Nolan Shook, Hardy & Bacon 600 14th Street, N.W. Suite 800 Washington, D.C. 20005	Monterey Licenses, LLC David D. Oxenford Shaw Pittman LLP 2300 N Street, N.W. Washington, DC. 20037
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Proposal: Reallot Channel 259C from Port Royal to Hollywood, South Carolina, as the community's first local aural transmission service and modify the license of Station WJZX(FM) to reflect the new community. To accommodate this change, reallot Channel 300C2 from Hilton Head Island to Port Royal to retain Port Royal's sole local aural transmission service and modify the license of Station WLOW(FM) to reflect the new community.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Hollywood, South Carolina	---	259C
Hilton Head Island, South Carolina	291C2, 300C2	291C2
Port Royal, South Carolina	259C	300C2

Coordinates: Channel 259C can be allotted at Hollywood at coordinates 32-25-10 NL and 80-28-30 WL; Channel 300C2 can be allotted at Port Royal at coordinates 32-13-36 NL and 80-50-53 WL.

Additional Information: Channel 259C can be reallotted from Port Royal to Hollywood at Station WJZX(FM)'s current transmitter site 41.2 km (25.6 miles) southwest of the community. Channel 300C2 can be reallotted from Hilton Head Island to Port Royal at Station WLOW(FM)'s current transmitter site 22.3 km (13.9 miles) southwest of the community. There are no population gains or losses and the coverage over the Savannah, Georgia Urbanized Area remains the same (37.6%). In support of the proposal, the parties state that Hollywood is a community for allotment purposes and is deserving of a first local aural transmission service.³ It also states that the proposal will result in a public interest benefit because Hollywood will gain a first local aural transmission service and claims that Port Royal will not be left unserved because it has proposed Channel 300C2 as a replacement channel at that community. We seek comment on the public interest benefits of this proposal.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

³ Hollywood is listed in the U.S. Census with a 2000 population of 3,946 persons. It has a zip code, post office and elected mayor and six member Town Council. The town government also has a town clerk/treasurer and planning administrator. There are fire services offered by surrounding jurisdictions but for the exclusive use of Hollywood citizens. Police service is provided by the county sheriff. There are numerous retail establishments, churches, schools and clubs.

B. MB Docket No. 02-199; RM-10514

Petitioner: Columbia Broadcasting Company, Inc.
 c/o Mark N. Lipp
 J. Thomas Nolan
 Shook, Hardy & Bacon
 600 14th Street N.W.
 Suite 800
 Washington, DC 20005

Proposal: Substitute Channel 300C2 for 300C1 at Magnolia, Arkansas and reallocate Channel 300C2 from Magnolia to Oil City, Louisiana, as the community's first local transmission service, and modify Station KVMA's authorization to specify Oil City as the community of license.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Magnolia, Arkansas	300C1	---
Oil City, Louisiana	-----	300C2

Coordinates: 32-54-06 NL and 93-44-01 WL

Additional Information: Channel 300C2 can be reallocated from Magnolia to Oil City at petitioner's proposed site 27.6 kilometers (17.1 miles) northeast of the community. No urbanized areas are involved. In support of the allotment petitioner states that Oil City is a community for allotment purposes.⁴ It also states that the proposal will result in a preferential arrangement of allotments because Oil City will gain a first local aural transmission service and Magnolia will not be left unserved.⁵ It also states that there will be a net gain in population of 198,793 persons able to receive a 60dBu signal from the station, and that the loss area will continue to be well served by 5 or more services. A preliminary Commission engineering analysis shows that from the proposed transmitter site, there is a net gain in population of 110,631 persons and that there would be an area in which 4,341 persons would be left with only 4 services. Petitioner is requested to address this discrepancy and provide information in support of the public interest benefits in the change of community.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

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.

⁴ Oil City is listed in the U.S. Census with a 2000 population of 1,219 persons. It has a zip code, post office, an elected mayor and district council, own attorney, town clerk, police chief, housing authority and zoning board. It has fire and police departments and sheriff's office. It also has a long history and traditions, as well as numerous businesses, a school, churches and clubs.

⁵ Station KVMA(AM) will continue to serve Magnolia.

5. Interested parties may file comments on or before, September 23, 2002 and reply comments on or before, October 8, 2002 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket 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
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. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) 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 12th Street, S.W., 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 Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington D.C. 20554.

