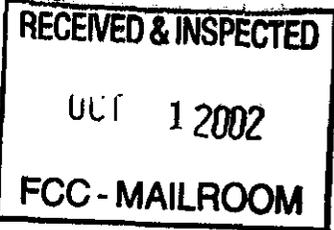


Federal Communications Commission

DA 02-2319

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



In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-295
Table of Allotments,)	RM-10580
FM Broadcast Stations.)	
(Gonzales, Houma, and Westwego, Louisiana)	
and Hattiesburg, Mississippi))	

NOTICE OF PROPOSED RULE MAKING**Adopted: September 11, 2002****Released: September 27, 2002****Comment Date: November 18, 2002****Reply Comment Date: December 3, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed jointly by Capstar TX Limited Partnership, licensee of Station WUSW(FM), Channel 279C, Hattiesburg, Mississippi, and Clear Channel Radio Licenses, Inc.,¹ licensee of Station KFXN(FM), Channel 281C, Houma, Louisiana, ("Joint Petitioners"). The Joint Petitioners seek to amend the FM Table of Allotments by downgrading Channel 279C, Station WUSW, to Channel 279C0 and moving Station WUSW from Hattiesburg, Mississippi, to Westwego, Louisiana as that community's first local aural transmission service. Joint Petitioners assert that in order to accommodate the foregoing relocation of Station WUSW, it is necessary to downgrade Channel 281C, Station KFXN, to Channel 281C0 and move Station KFXN from Houma to Gonzales, Louisiana, as that community's first local aural transmission service. Joint Petitioners state that if the foregoing relocations of Stations WUSW and KFXN are permitted, Joint Petitioners will file applications to modify the license of Channel WUSW to specify operation on Channel 279C0 at Westwego, Louisiana, and of Station KFXN to specify operation on Channel 281C0 at Gonzales, Louisiana.

2. With respect to the foregoing proposals, the Joint Petitioners seek 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.²

3. The Joint Petitioners assert that the adoption of their change of community proposals for Stations WUSW and KFXN will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*³ by providing Westwego, Louisiana and Gonzales,

¹ Both licensees are indirect wholly owned subsidiaries of Clear Channel Communications, Inc.

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).

³ *Revision of FM Assignment Policies and Procedures ("FM Priorities")*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other

Louisiana, with their first local aural transmission services. Westwego is an incorporated city with a 2000 U.S. Census population of 10,763 persons. Since it is located within the New Orleans Urbanized Area, it is required to present a *Tuck* showing that Westwego is sufficiently independent of the New Orleans Urbanized Area that the Joint Petitioners' proposal to relocate Station WUSW to Westwego deserves credit for providing the first local service to Westwego.⁴ The Joint Petitioners have provided a *Tuck* analysis to demonstrate that Westwego is sufficiently independent of the New Orleans Urbanized Area to merit a first local service preference under priority (3) of the *FM Priorities*. In addition, since the Joint Petitioners' proposal, will provide a 70 dBu signal contour coverage to 100 percent of the Slidell, Louisiana Urbanized Area as well as the New Orleans Urbanized Area, they must provide a *Tuck* showing for the Slidell Urbanized Area as well as for the New Orleans Urbanized Area.⁵ We note that the allotment of Channel 279C0 to Westwego as its first local transmission service would not deprive Hattiesburg, Mississippi, of its sole transmission service because Hattiesburg will retain service from seven radio broadcast stations.

4. With respect to the Joint Petitioners' proposal to relocate Station KFXN from Houma, Louisiana, to Gonzales, Louisiana, we observe that Gonzales is an incorporated city with a 2000 U.S. Census population of 8,156. Joint Petitioners state that Gonzales has an elected mayor and five district council members, and a city government that provides water, sewage and sanitation services, local planning and zoning, police protection, and fire rescue services. At its current licensed location of Houma, Louisiana, Station KFXN provides 70 dBu contour service to 100 percent of the Houma Urbanized Area. It will continue to provide such service to the Houma Urbanized Area after it is relocated to Gonzales. In these circumstances, no *Tuck* showing is required. Further, Station KFXN's relocation to Gonzales will not deprive Houma, Louisiana of its sole existing service, because Houma will continue to receive local service from Stations KCIL(FM) and KFXV(AM).

5. Joint Petitioners state that the 60 dBu gain area associated with the proposed downgrade of Channel 279C to 279C0 and the move of Station WUSW to Westwego will encompass 1,514,562 persons, and the 60 dBu loss area for that proposal will encompass 258,159 persons, for a net gain of 1,087,051 additional persons served within the Station WUSW 60 dBu service contour. Joint Petitioners explain that the 60 dBu gain area associated with the proposed downgrade of Channel 281C to 281C0 and the move of Station KFXN to Gonzales will encompass 18,665 persons, and the 60 dBu loss area will encompass 655,290 persons, for a net loss of 636,625 persons. Joint Petitioners emphasize that the result of the two proposals is a total net gain of 548,681 persons within the 60 dBu contours of Stations WUSW and KFXN. Further, Joint Petitioners claim that the Channel 279C0 60 dBu loss area and the Channel 281C0 60 dBu loss area are well served by a number of radio services.

6. Since the Joint Petitioners' change of community proposals are consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorizations of Stations WUSW and KFXN without entertaining competing expressions of interest in the use of Channel 279C0 at Westwego, Louisiana, or the use of Channel 281C0 at Gonzales, Louisiana, or requiring the Joint Parties to demonstrate the availability of additional equivalent channels for use by other parties.

7. Consistent with the technical requirements of the Commission's Rules, Channel 279C0 can be

public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ See *Huntington Broadcasting Co. v FCC*, 192 F.2d 33 (D.C. Cir 1951), *RKO General, Inc.* ("KRFC"), 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* ("Tuck"), 3 FCC Rcd 5374 (1988).

⁵ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

allotted to Westwego, Louisiana, at the Joint Parties' specified site, utilizing coordinates of 29-54-52 NL and 89-54-34 WL, with a site restriction 22.5 kilometers (14 miles) east of Westwego. Channel 281C0 can be allotted to Gonzales, Louisiana, at the Joint Parties' specified site, utilizing coordinates of 29-52-55 NL and 90-56-07 WL, with a site restriction of 39.5 kilometers (24.6 miles) south of Gonzales.

8. Accordingly, we seek comments on the foregoing proposed amendments 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>
Gonzales, Louisiana	-----	281C0
Houma, Louisiana	281C, 298C1	298C1
Westwego, Louisiana	-----	279C0
Hattiesburg, Mississippi	221A, 226A, 279C, 283C1	221A, 226A. 283C1

9. 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.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 18, 2002, and reply comments on or before December 3, 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 Joint Petitioners' counsel, as follows:

Mark N. Lipp, Esq
 J. Thomas Nolan, Esq.
 Tamara Y. Brown, Esq.
 Shook, Hardy & Bacon
 600 14th Street, N.W., Suite 800
 Washington, D.C. 20005-2004

11. 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, Vistrionix, 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.

12. 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.⁶

13. 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
Media Bureau

Attachment: Appendix

⁶ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do No 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).

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.