

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-8
Table of Allotments,)	RM-10625
FM Broadcast Stations.)	
(Saluda and Irmo, South Carolina))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 15, 2003

Released: January 17, 2003

Comment Date: March 10, 2003

Reply Comment Date: March 25, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Breckenndge Communications, LLC ("Petitioner"). licensee of Station **WJES-FM**, Channel 221A, Saluda, South Carolina. Petitioner **seeks** to amend the **FM** Table of Allotments by upgrading Station WJES-FM from Channel 221A to 221C3 and changing Station WJES-FM's community of license from Saluda to Irmo, South Carolina. These changes would provide Irmo with its first local aural transmission service.

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 proposed use of Channel 221C3 at Irmo is mutually exclusive with Station WJES-FM's existing authorization at Saluda.

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the *FM Allotment Priorities*,² by providing Irmo, South Carolina, (population of 11,039),³ with its first local aural transmission service. The allotment of Channel 221C3 to Irmo would not deprive Saluda (population of 3,066) of its sole local transmission outlet, because Saluda would retain local service from Station WJES(AM).

4. Irmo is located within the Columbia Urbanized Area. Therefore, Petitioner must demonstrate that the intended city of license is sufficiently independent of the urbanized area to justify consideration as a first

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 See *Revision of FM Assignment Policies and Procedures* ("FM Allotment 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 public interest matters [co-equal weight is given to priorities (2) and (3)].

³ Population figures reported herein were taken from the 2000 U.S. Census.

local service.⁴ Petitioner has provided a *Tuck* analysis to demonstrate that Irmo is sufficiently independent of the Columbia Urbanized Area to merit a first local service preference. Parties may comment on this submission. We believe that Petitioner's proposal warrants consideration since the allotment of Channel 221C3 to Irmo, South Carolina, could provide a first local aural transmission service to Irmo.

5. Since the transmitter site for Station WJES-FM will be relocated to accommodate Petitioner's request to reallocate Channel 221C3 from Saluda to Irmo, gain and loss areas will be created. Our engineering analysis reveals that Petitioner's reallocation proposal will result in a net gain in population of 441,703 people and a net gain in area of 2,963 square kilometers. Both the loss area of Channel 221A at Saluda and the gain area of Channel 221C3 at Irmo have at least five full-time reception services and thus are considered to be adequately served.

6. Our engineering analysis reveals that the 1 mV/m (60dBu) contour of requested Channel 221C3 at Irmo would overlap with the Grade B (47 dBu) contour of Station WJBF(TV), Channel 6, Augusta, Georgia. The Commission has expressed its concern regarding the effect that potential upgrades on Channel 221 may have on the availability of noncommercial educational channels operating on Channels 218, 219 and 220 in markets where a TV Channel 6 operation exists. In such markets, the existence of a TV Channel 6 station effectively restricts the use of the lower portion of the noncommercial educational band, while upgrades on Channel 221 could restrict the use of the upper portion of the noncommercial educational band. Therefore, the staff requested that Petitioner provide a preclusion study demonstrating the impact of allotting Channel 221C3 to Irmo on the availability of Class A, C3, C2, C1, C0 and C noncommercial educational allotments on Channels 218, 219 and 220.⁵ Petitioner responded to this request by submitting a Supplement to Petition for Rulemaking that included the requested preclusion study. That study demonstrates that upgrading Station WJES-FM from Channel 221A to 221C3 and reallocation of the station to Irmo, South Carolina, would not preclude the establishment of any new or upgraded noncommercial educational station on Channels 218, 219, or 220. In fact, any new or upgraded stations on those channels are already precluded by other existing FM authorizations.

7. 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 WJES-FM without entertaining competing expressions of interest in the use of Channel 221C3 at Irmo, South Carolina, or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

8. Consistent with the technical requirements of the Commission's Rules, Channel 221C3 can be allotted to Irmo, South Carolina, at Petitioner's specified site, utilizing coordinates 34-09-00 NL and 81-13-00 WL, with a site restriction of 7.8 kilometers (4.9 miles) northwest of Irmo.

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

⁵ This request was made pursuant to the *Firs! Report and Order in FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations*, 2 FCC Rcd 660 (1987). See also *Fayetteville, Arkansas*, 5 FCC Rcd 2539 (1990).

9. 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>Channel Nos.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Saluda, South Carolina	221A	-----
Irmo, South Carolina	-----	221C3

10. 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.

11. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 10, 2003, and reply comments on or before March 25, 2003, 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 Parties' counsel, as follows:

Matthew H. McCormick, Esq.
 Reddy, Begley & McCormick, LLP
 2175 K Street, N.W., Suite 350
 Washington, D.C. 20037-1845

12. 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,

13. 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

14. 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 **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.

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 Rewired. 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. Cui-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.