

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

In the Matter of)
)
 Amendment of Section 73.202(b))
 FM Table of Allotments,) MB Docket No. 03-142
 FM Broadcast Stations.) RM-10539
 (Glen Arbor, Michigan))

NOTICE OF PROPOSED RULEMAKING

Adopted: June 30, 2003

Released: July 1, 2003

Comments Date: August 22, 2003

Reply Comments Date: September 8, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by WKJF Radio, Inc. ("WKJF"), requesting the deletion of vacant Channel 227A at Glen Arbor, Michigan.¹ George S. Flinn, Jr. ("Flinn") filed an Opposition to the Petition for Rule Making. WKJF filed reply comments.
2. WKJF requests deletion of the Glen Arbor channel to accommodate a new transmitter site for Station WKJF-FM, Cadillac, Michigan. Since the station's inception in 1961, Station WKJF-FM's antenna has been side-mounted on the WWTV(TV) tower located 9 miles southeast of Cadillac. WKJF states that the owner of the tower has requested Station WKJF-FM to relocate so the space can be utilized by Station WWTV-DT for digital television. Although WKJF-FM has located a suitable site and is willing to downgrade from Class C to Class C1, the site is short-spaced to Channel 227A, Glen Arbor, Michigan. WKJF contends that there are no fully spaced sites available for Channel 227A outside of the Sleeping Bear Dunes National Lakeshore that will provide city-grade coverage to the community and meet FAA approval. WKJF argues that there is no public interest benefit in retaining a defective allotment in the FM Table which prevents the use of spectrum for other FM services such as the modified facility of Station WKJF-FM at Cadillac.
3. Channel 227A was allotted to Glen Arbor, Michigan, in MM Docket No. 97-41, in response to a petition filed by Arborland Broadcasting Company with an effective date of June 23, 1997. Flinn was the sole applicant for Channel 227A. The Audio Division has determined that Flinn's application for Channel 227A is unacceptable and has dismissed the application.² Although Flinn filed a Petition for

¹ WKJF's Petition for Rule Making was returned as unacceptable for filing because at the time it was filed, an application was on file for the use of Channel 227A at Glen Arbor. WKJF filed a Petition for Reconsideration in which it requests reinstatement of its proposal based on action taken by the Audio Division on May 2, 2002, dismissing the application of George S. Flinn, Jr. for Channel 227A at Glen Arbor (BPH-19970724M4). On June 3, 2002, George S. Flinn, Jr. filed a Petition for Reconsideration of the dismissal of its application which was denied on May 28, 2003. As we now view the allotment at Glen Arbor as vacant, we shall issue a *Notice of Proposed Rule Making* proposing to delete Channel 227A at Glen Arbor. As a result of this *Notice of Proposed Rule Making*, we are dismissing the Petition for Reconsideration filed by WKJF as moot.

² On November 19, 1998, Flinn was notified by the Commission that his selected site was unusable due to its location in the Sleeping Bear Dunes National Lakeshore as the National Park Service opposed construction of a

(continued....)

Reconsideration of that action, as stated in Footnote No. 1, the Petition for Reconsideration has also been dismissed. We now view Channel 227A at Glen Arbor as a vacant allotment.

4. In light of the fact that no party has demonstrated that a fully spaced site for Channel 227A at Glen Arbor exists while providing city grade coverage to the entire community, and that is outside of the Sleeping Bear Dunes National Lakeshore, we tentatively conclude that the allotment can never be utilized. We believe the public interest would be served by the deletion of vacant Channel 227A at Glen Arbor, Michigan, because it will allow Station WKJF-FM, Cadillac, Michigan, to continue serving the community at a new site. We shall invite comments on the proposal to delete Channel 227A at Glen Arbor, Michigan. Although site certification is generally not required in the context of a rule making proceeding, we believe the facts in this instance warrant a departure from that policy. Therefore, any party filing an expression of interest in retaining Channel 227A at Glen Arbor will be required to provide evidence that the National Park Service will allow construction of a commercial transmitter within the boundaries of the National Lakeshore or that there is a site outside of the boundaries of the National Lakeshore that is fully spaced and can provide city grade coverage to the community of Glen Arbor, taking into account any terrain obstacles. For sites outside of the National Lakeshore, any interested party will be required to provide information demonstrating that it has obtained assurances from the owner of its proposed site that it will be able to buy or lease the location specified in its comments. Failure to provide the requested information will result in rejection of the expression of interest.

6. In view of the above, we shall propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Glen Arbor, Michigan, as follows:

Community	Channel No.	
	Present	Proposed
Cadillac, Michigan	225C	225C1
Glen Arbor, Michigan	227A, 238C2, 251C2	238C2, 251C2

7. 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.

8. Interested parties may file comments on or before August 22, 2003, and reply comments on or before September 8, 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 CRH's counsel, as follows:

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 Law Offices of Dennis J. Kelly
 Post Office Box 41177
 Washington, D. C. 20018

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transmitter at the specified site. Flinn amended to a new site but was notified by the Commission on January 20, 1999, that FAA clearance for the proposed tower was required for the registration process and that from the amended site, 70 dBu coverage would not be provided to the entire community of Glen Arbor.

9. 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.

10. 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.³

11. For further information concerning this proceeding, contact Kathleen Scheuerle, (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 petitioners 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

³ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

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 petitioners. 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.