

OCT 24 2003

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-223
Table of Allotments,)	RM-10813
FM Broadcast Stations.)	
(LaGrange, Greenville and)	
Waverly Hall, Georgia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 22, 2003

Released: October 24, 2003

Comment Date: December 15, 2003

Reply Comment Date: December 30, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making jointly filed by Cox Radio, Inc., its wholly-owned subsidiary CXR Holdings, Inc., and Davis Broadcasting, Inc., of Columbus ("Petitioners"), proposing (1) the downgrade of the Channel 239C3 Greenville, Georgia allotment to Channel 239A, the reallocation of Channel 239A to Waverly Hall, Georgia, and the modification of Station WKZJ(FM)'s license accordingly; and (2) the reallocation Channel 281C1 from LaGrange to Greenville, Georgia, and the modification of Station WALR-FM's license accordingly. Petitioners state their intention to apply for the respective channels, if reallocated.

2. The proposal is filed pursuant to 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 Petitioners state that the proposal would result in a preferential arrangement of allotments pursuant to the Commission's FM allotment priorities.² In support of their proposal, petitioners also state that Waverly Hall is an incorporated town listed in the 2000 U.S. Census with a population of 709 persons. It has its own local government, which is headed by an elected mayor, and a five-member, part-time city council. Waverly Hall has a fire department, police department, post office and its own zip code (31831). Additionally, Waverly Hall has grocery stores, restaurants, a bank, churches, as well as businesses using the name "Waverly Hall" such as Waverly Hall Motor Co., Inc. and Waverly Hall Farm and Tractor. It has a local chapter of the POW-

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 The FM 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 given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1982)

MIA veterans organization "Rolling Thunder," as well as a prominent local private school, Waverly Hall Christian Academy. Waverly Hall has its own phone book through the independent telephone company, Waverly Hall Telephone, LLC.

3. Moreover, petitioners assert that the proposal would, under priority (3), provide a first local service for Waverly Hall, maintain a local service in LaGrange, and provide a higher class channel for Greenville. Since petitioners seek to change the transmitter site for the reallocation of Channel 239A at Waverly, a gain and loss study is required and has been provided. While the Commission is concerned with the migration of stations from rural to urban communities, neither the reallocation of Channel 239A to Waverly Hall, nor the reallocation of Channel 281C1 to Greenville as a replacement service, will not result in the move into an Urbanized Area. We also note that the 70 dBu signals for the reallocations will not encompass 50% or more of any Urbanized Area. Therefore, a *Tuck* analysis is not necessary.³ However, petitioners are requested to provide the overall public interest benefits that would be derived from the reallocations.

4. We believe this proposal warrants consideration since the reallocation of Channel 239A at Waverly Hall, Georgia, would provide the community with its first local aural transmission service. The reallocation would not deprive Greenville of its sole local service because Channel 281C1 is proposed herein as a replacement service. Likewise, Channel 281C1 can be reallocated to Greenville, Georgia, without depriving LaGrange of its sole local service.⁴ An engineering analysis has determined that Channel 239A can be reallocated to Waverly Hall in compliance with the Commission's minimum distance separation requirements with a site restriction of 14 kilometers (8.7 miles) south at petitioners' requested site.⁵ Likewise, Channel 281C1 can be reallocated to Greenville without the imposition of a site restriction at Station WALR-FM's presently authorized site.⁶ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 239A at Waverly Hall, Georgia, or for Channel 281C1 at Greenville, Georgia, or require petitioners to provide equivalent class channels for the use of other interested parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

³ *Hunington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990), and *Lave and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁴ Two AM stations (Stations WTRP and WLAG) and one noncommercial FM station (Station WOAK) would remain licensed to the community.

⁵ The coordinates for Channel 239A at Waverly Hall are 32-33-58 North Latitude and 84-41-03 West Longitude.

⁶ The coordinates for Channel 281C1 at Greenville are 33-24-43 North Latitude and 84-50-03 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Greenville, Georgia	239C3	281C1
LaGrange, Georgia	281C1	---
Waverly Hall, Georgia	---	239A

6. 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

7. Interested parties may file comments on or before December 15, 2003, and reply comments on or before December 30, 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 counsel for petitioner, as follows:

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of Columbus)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do to apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷

9 Parties are required to 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, Natek, 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.

⁷ 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

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. For further information concerning this proceeding, contact Sharon P. McDonald, 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 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., Room 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 Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.