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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Connersville, Madison, and Richmond, Indiana,	)	MB Docket No. 04-17
Erlanger and Lebanon, Kentucky, and Norwood,	)	RM-11113
Ohio; and Lebanon, Lebanon Junction, New	)	RM-11114
Haven, and Springfield, Kentucky)	)	

NOTICE OF PROPOSED RULEMAKING

AND

ORDER TO SHOW CAUSE

Adopted: January 26, 2005 **Released: January 28, 2005**

Comment Date: March 21, 2005
Reply Comment Date: April 5, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two Petitions for Rule Making that involve multiple interrelated proposals. The first Petition for Rule Making was filed by Rodgers Broadcasting Corporation ("Rodgers Broadcasting"), licensee of Station WIFE, Channel 262B at Connersville, Indiana and Station WFMG, Channel 267B, Richmond, Indiana. The second Petition for Rule Making was jointly filed by Washington County CBC, Inc., licensee of Station WAKY-FM, Channel 274A, Springfield, Kentucky, Elizabethtown CBC, Inc., licensee of Station WTHX, Channel 297A, Lebanon Junction, Kentucky and CBC of Marion County, Inc., licensee of Station WLSK, Channel 265C3, Lebanon, Kentucky (collectively "Joint Petitioners"). We are consolidating the two proposals because Rogers Broadcasting proposes the substitution of Channel 265A for Channel 265C3 at Lebanon, Kentucky, while the Joint Petitioners request the reallotment of Channel 265A from Lebanon to Springfield, Kentucky. Each licensee has stated their intentions to apply for the requested channels, if allotted.

2. Rogers Broadcasting and the Joint Petitioners each filed their respective petitions 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 a competing expression of interest.[1] When considering a reallotment proposal, a comparison is made between

[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 7394 (1990).

the existing allotment and the proposed allotment to determine whether the reallotment would result in a preferential arrangement of allotments based upon the FM Allotment priorities.[2]

3. **Rodgers Broadcasting Proposal.** Rodgers Broadcasting seeks the substitution of Channel 262A for Channel 262B at Connersville, Indiana, reallotment of Channel 262A from Connersville, Indiana to Norwood, Ohio, as its first local service and modification of Station WIFE license accordingly. [3] Norwood is located within the Cincinnati Urbanized Area and the proposed 70 dBu contour would cover 43.2 percent of this urbanized area. A *Tuck* showing is required because the proposed Norwood reallotment is located in an Urbanized Area, thus implicating the Commission's policy against migration of stations from rural to urban areas. [4] In this regard, a rulemaking proponent must demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. In making the determination, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most importantly, the independence of the suburban community. To support a first local service preference, Rodgers Broadcasting has submitted a *Tuck* showing. We seek specific comment on this submission. The proposed reallotment would result in a population net gain of 1,172,668 persons, while the loss area would continue to receive at least five other aural services with the exception of a small area receiving four aural services. However, Rodgers Broadcasting notes that this is consistent with other relocations granted by the Commission.[5]

4. To accommodate the proposed Norwood reallotment, Rodgers Broadcasting requests the substitution of Channel 266A for Channel 265A at Erlanger, Kentucky and modification of the FM Station WIZF license accordingly.[6] To this end, we are issuing an *Order to Show Cause* directed to Blue Chip Broadcasting Licenses II, Ltd., licensee of FM Station WIZF to show cause why its license should not be modified to specify operation on Channel 266A. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.[7] This proposed license modification would provide for a first local service for Norwood and eliminate a preexisting short spacing with FM Station WEEC, Springfield, Ohio. Rodgers Broadcasting states that it will reimburse the licensee of FM Station WIZF for reasonable costs associated with changing to Channel 266A at Erlanger. [8]

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[2] 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 priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1988).

[3] Channel 262A can be allotted to Norwood provided there is a site restriction of 9.4 kilometers (5.8 miles) southwest at coordinates 39-07-19 NL and 84-32-52 WL. Norwood is an incorporated place with a 2000 U.S. Census population of 21,675 persons. Norwood has its own local government and elected officials, fire and police departments, school system, library, zip code (45212) and post office, commercial establishments, health facilities, and transportation system.

[4] *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). *See also, Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

[5] *Citing Scappoose and Tillamook, Oregon*, 15 FCC Rcd 10899 (MMB 2000); *Detroit Lake and Barnesville, Minnesota*, 16 FCC Rcd 22581 (MMB 2001); and *Earle, Arkansas, et al.*, 10 FCC Rcd 8270 (MMB 1995).

[6] Channel 266A can be allotted to Erlanger at Station WIZF's current license site at coordinates 39-06-18 NL and 84-33-24 WL.

[7] *See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

[8] *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

5. The proposed Channel 266A substitution at Erlanger requires the substitution of Channel *265A for vacant Channel *266A at Madison, Indiana;[9] and the substitution of Channel 267B1 for Channel 267B at Richmond, Indiana and modification of the FM Station WFMG license to reflect this change.[10] Rodgers Broadcasting is the licensee of Station WFMG. The proposed Channel 267B1 substitution at Richmond would reduce an existing short-spacing with FM Station WKKG, Columbus, Indiana (from 56.18 to 27.49 kilometers) and eliminate three existing short-spacings with FM Station WAGX, Manchester, Ohio, FM Station WBAA, West Lafayette, Indiana, and FM Station WPGW, Portland, Indiana. The proposed Channel 267B1 substitution would also serve a loss area of 38,386 persons.

6. To accommodate the proposed Channel 265A substitution at Madison it is necessary to substitute Channel 265A for Channel 265C3 at Lebanon and modify the Station WLSK license accordingly.[11] Rodgers Broadcasting has entered into an agreement with CBC of Marion County, Inc., licensee of Station WLSK, agreeing to the downgrade and change of transmitter site. This proposed channel substitution would eliminate a preexisting short-spacing with FM Station WBDC, Huntingburg, Indiana and result in a net loss in service to 43,030 persons. However, the loss area receives in excess of five services and is considered well-served.[12]

7. **Joint Petitioners Proposal.** In their Petition for Rule Making, the Joint Petitioners request the reallotment of Channel 297A from Lebanon Junction to New Haven, Kentucky, as its first local service and modification of the Station WTHX license to specify New Haven as the community of license.[13] To prevent removal of sole local service for Lebanon Junction, the Joint Petitioners propose the reallotment of Channel 274A from Springfield to Lebanon Junction, Kentucky and modification of the Station WAKY-FM license.[14] Moreover, the Joint Petitioners request the substitution of Channel 265A for Channel 265C3 at Lebanon, Kentucky, reallotment of Channel 265A from Lebanon to Springfield, Kentucky and modification of the Station WLSK license to replace the loss of sole local service for Springfield.[15] In these circumstances, the proposed Springfield reallotment for Station WLSK would supersede the Rodgers Broadcasting proposal, which requested that Station WLSK remain on Channel 265A at Lebanon. In this instance, a *Tuck* showing is not required because none of the proposed reallotments are located within an

[9] Channel *265A can be allotted to Madison at its current reference site at coordinates 38-49-15 NL and 85-18-46 WL.

[10] Channel 267B1 can be allotted to Richmond provided there is a site restriction of 11.6 kilometers (7.2 miles) northwest at coordinates 39-55-09 NL and 84-57-47 WL. This is the currently licensed site for Station WFMG.

[11] Channel 265A can be allotted to Lebanon provided there is a site restriction 9.6 kilometers (6.0 miles) northeast at coordinates 37-38-50 NL and 85-11-50 WL.

[12] The Commission has considered five or more services to be "abundant." *Family Broadcasting Group,* 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied,* FCC 03-559 (Nov. 29, 1983)

[13] Channel 297A can be reallotted to New Haven provided there is a site restriction 12.4 kilometers (7.7 miles) northwest at coordinates 37-43-00 NL and 85-42-38 WL. New Haven is an incorporated place with a 2000 U.S. Census population of 849 persons. New Haven has a number of businesses and organizations, including Kentucky Railway Museum, Rolling Fork Christian Church, St. Catherine Elementary School, Sherwood, Inn, the Rolling Fork Iron Horse Festival, and Fox Hollow Pottery.

[14] Channel 274A can be reallotted to Lebanon Junction provided there is a site restriction 13.8 kilometers (8.6 miles) southeast at coordinates 37-46-07 NL and 85-35-57 WL.

[15] Channel 265A can be reallotted to Springfield provided there is a site restriction 4.8 kilometers (3.0 miles) at coordinates 37-38-50 NL and 85-11-50 WL. This is the same site proposed by Rodgers Broadcasting in its Petition for Rule Making. CBC of Marion County, Inc., one of the Joint Petitioners, is the licensee of Station WLSK.

Urbanized Area or would cover more than fifty percent of a particular Urbanized Area with a 70 dBu contour.

8. The Joint Petitioners states that the proposed New Haven reallotment would result in first local service and a population net gain of 1,271 persons, while the loss area would continue to receive at least five other aural services. The proposed Lebanon Junction reallotment would result in a population net gain of 47,602 persons. The loss area is also considered well-served because it would continue to receive at least five other aural services.

9. Both proposals warrant consideration because the proposed reallotments could result in the public interest because New Haven, Kentucky and Norwood, Ohio could both receive a first local service. Accordingly, we seek comments on the proposed amendments of the FM Table of Allotments, Section 47 C.F.R. 73.202(b), with respect to the communities listed below, as follows:

Community	Present	Proposed
Connersville, Indiana	262B	----------
Madison, Indiana	*266A	*265A
Richmond, Indiana	267B	267B1
Erlanger, Kentucky	265A	266A
Lebanon, Kentucky	265C3	----------
Lebanon Junction, Kentucky	297A	274A
New Haven, Kentucky	--------	297A
Norwood, Ohio	--------	262A
Springfield, Kentucky	274A	265A

10. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Blue Chip Broadcasting Licenses II, Ltd., licensee of FM Station WIZF, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 266A in lieu of Channel 265A at Erlanger, Kentucky.

11. Pursuant to Section 1.87 of the Commission's Rules, Blue Chip Broadcasting Licenses II, Ltd., may, no later than March 21, 2004, file a written statement showing with particularity why its respective license (File No. BLH-19890207KF) should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Blue Chip Broadcasting Licenses II, Ltd. to furnish additional information. If Blue Chip Broadcasting Licenses II, Ltd raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Blue Chip Broadcasting Licenses II, Ltd. will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

12. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Imaging Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

Blue Chip Broadcasting Licenses, II, Ltd.
1 Centennial Plaza
705 Central Avenue, Suite 200
Cincinnatti, Ohio 45202

13. 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.

14. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 21, 2005, and reply comments on or before April 5, 2005, 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 petitioner, as follows:

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Seventh Floor
Washington, D.C. 20005

15. 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, 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. 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.

16. 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.[16] This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002,

[16] *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).

Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

17. For further information concerning a proceeding listed above, contact Rolanda F. Smith, 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 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 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), 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* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* 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 47 C.F.R. Sections 1.415 and 1.420, 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* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, 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.