

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-35
Table of Allotments,)	RM-11134
FM Broadcast Stations.)	
(Jackson and Charlotte, Michigan))	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 2005

Released: February 4, 2005

Comment Date: March 28, 2005

Reply Comment Date: April 12, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Rubber City Radio Group ("Petitioner"), licensee of FM Station WJXQ, Channel 291B, Jackson, Michigan. Petitioner proposes the reallocation of Channel 291B from Jackson to Charlotte, Michigan, and modification of its Station WJXQ license to specify Charlotte as the community of license. This reallocation will facilitate the resolution of two related proposals now before the Commission. In MB Docket No. 03-222, Petitioner has proposed to modify the license of Station WQTX, Channel 224A, Charlotte, Michigan, by specifying operation on Channel 225A and by changing Station WQTX's community of license from Charlotte to Grand Ledge, Michigan.¹ In a related context, Christian Broadcasting System, Ltd, licensee of AM Station WLCM, Charlotte, has filed an application to change its community of license from Charlotte to Holt, Michigan (File No. BMJP-20040123AJX). Favorable action on both of these proposals would result in the removal of local radio service from Charlotte. The instant proposal will ensure the continuation of local service at Charlotte. If the petition before us is granted, Petitioner will file an application to effectuate its proposal.

2. Petitioner invokes 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 The proposed use of Channel 291B at Charlotte, Michigan, is mutually exclusive with Station WJXQ's existing authorization at Jackson, Michigan.

3. Petitioner asserts that the allotment of Channel 291B to Charlotte would not deprive Jackson of its sole local transmission outlet, because Jackson would continue to be served by five local radio stations. We note that the Commission's FM allotment priorities set forth in *Revision of FM Assignment Policies and*

¹ *Charlotte and Grand Ledge, Michigan*, 18 FCC Rcd 21867 (MB 2003).

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).

*Procedures*³ do not directly apply here because Petitioner seeks to maintain local service at Charlotte, if the related proposals are granted. The related proposals would enable the establishment of a first local service by Petitioner at Grand Ledge, Michigan (2000 U.S. Census population 7,813) and a first local service to Holt, Michigan (2000 U.S. Census population 11,315), by virtue of Christian Broadcasting System, Ltd.'s AM application. Because Petitioner's proposal is consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall propose to modify the authorization of FM Station WJXQ without entertaining competing expressions of interest in the use of Channel 291B at Charlotte, Michigan or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

4. Consistent with the technical requirements of the Commission's rules, Channel 291B can be allotted to Charlotte, Michigan, utilizing coordinates of 42-23-28 NL and 84-37-22 WL, with a site restriction of 30 kilometers (16.1 miles) southeast of Charlotte. Although FM Station WJXQ is short spaced to two stations, FM Station WDTJ, Channel 290B, Detroit, Michigan, and FM Station WQLR, Channel 293B, Kalamazoo, Michigan, Petitioner states that these short spacings are "grandfathered." Further, Petitioner observes, the Commission has held that a "grandfathered" short spaced station may change its community of license so long as (a) no additional short-spacing is created; (b) no existing short spacing is exacerbated; and (c) the potential for interference between currently short spaced station is not increased.⁴ It appears that these conditions are met here since this proposal requires no change to Station WJXQ's transmitter site or facilities. Petitioner asserts that FM Station WJXQ's short spacing to FM Station WDTJ occurred prior to 1964 and that FM Station WJXQ is a grandfathered short spaced station under the provisions of Section 73.213(a) of the Commission's rules. In *Newnan and Peachtree City, Georgia, supra*, the Commission allowed a pre-1964 grandfathered short spaced station to change its community of license. That case, like this one, involved no change in the transmitter site. Further, in *Fremont and Holton, Missouri*,⁵ the Commission allowed a pre-1989 grandfathered FM station that complied with the old spacing rules when the station was authorized, but was short spaced under the new 1989 spacing rules for Class A FM stations, to change its community of license. In that case also, no change in transmitter site was contemplated. FM Station WJXQ is short spaced to FM Station WQLR as the result of action in *BC Docket No. 80-90*,⁶ which increased the spacing requirement between Class B channels from 64.4 kilometers to 74 kilometers. Since FM Station WJXQ has not changed its transmitter site since the implementation of *BC Docket No. 80-90, supra*, we tentatively conclude that it should be allowed to change its community of license in accordance with the cited cases. The public may comment on this tentative conclusion.

5. FM Station WJXQ is licensed at Jackson, which is located within the Jackson, Michigan Urbanized Area, and FM Station WJXQ currently serves 100 percent of the Jackson, Michigan

³ 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. Equal weight is given to priorities (2) and (3).

⁴ See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307,6308 (MMB 1992) and *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580 (MMB 1991).

⁵ 14 FCC Rcd 17108 (MMB 1999).

⁶ *Modification of FM Broadcast Station Rules to Increase the Availability of FM Broadcast Stations*, 94 FCC 2d 152 (1983).

Urbanized Area. Charlotte is not located in an urbanized area, and the proposed 70 dBu contour of FM Station WJXQ will still cover 100 percent of the Jackson, Michigan Urbanized Area because its facilities will not be modified. In this light, the proposed reallocation of Channel 291B to Charlotte does not implicate the Commission's policy regarding the migration of stations into urban areas, especially since FM Station WJXQ will be licensed to a community outside the Jackson, Michigan Urbanized Area.⁷ Since the transmitter site is located within 300 kilometers (199 miles) of the United States-Canadian border, concurrence with this proposed allotment has been requested from the Canadian Government.

6. 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>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Charlotte, Michigan	224A	224A, 291B
Jackson, Michigan	231B, 291B	231B

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. required by paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before March 28, 2005, and reply comments on or before April 12, 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 Petitioner's counsel, as follows:

Mark N. Lipp, Esq. .
 Scott Woodworth, Esq.
 Vinson & Elkins L.L.P.
 1455 Pennsylvania Ave., N.W., Suite 600
 Washington, D.C. 20004-1008

9. Parties must file an original and four paper 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

⁷ See, e.g., *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768, 6770 (MMB 2001).

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 Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

10. 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.⁸ 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, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

11. 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

⁸ 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 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.