

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-124
Table of Allotments,	)	RM-11174
FM Broadcast Stations.	)	
(Loretto, Tennessee, and	)	
Killen, Alabama)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: March 16, 2005**

**Released: March 18, 2005**

**Comment Date: May 9, 2005**

**Reply Date: May 24, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Pulaski Broadcasting, Inc. ("Pulaski"), licensee of Station WKSJ-FM, Channel 252C3, Killen, Alabama. In a recent *Report and Order*, we granted Pulaski's request for an upgrade to Channel 252C3 and a change of its community of license from Pulaski, Tennessee.<sup>1</sup> Now, pursuant to Sections 1.420(g) and (i) of the Commission's rules, Pulaski proposes to change the community of license for Station WKSJ-FM from Killen, Alabama, to Loretto, Tennessee.<sup>2</sup> Pulaski represents that if its request is granted, it will file an application to modify the facilities of Station WKSJ-FM to specify operation on Channel 252C3 at Loretto, Tennessee.

2. Pulaski proposes to change the community of license for Station WKSJ-FM from Killen to Loretto under the guidelines set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*.<sup>3</sup> That decision establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>4</sup>

<sup>1</sup> See *Ashland, Coaling, Cordova, Decatur, Dora, Hackleburg, Hobson City, Holly Pond, Killen, Midfield, Scottsboro, Sylacauga, and Tuscaloosa, Alabama, Atlanta, Georgia, and Pulaski, Tennessee*, 19 FCC Rcd 6943 (MB 2004) ("Ashland").

<sup>2</sup> 47 C.F.R. §§ 1.420(g) and (i).

<sup>3</sup> 4 FCC Rcd 4870 (1989), *recon.granted in part*, 5 FCC Rcd 7094 (1990).

<sup>4</sup> 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (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

3. In its Petition for Rule Making, Pulaski states that the proposed use of Channel 252C3 at Loretto is mutually exclusive with the current allotment of Channel 252C3 at Killen. Pulaski notes that Station WKSR-FM is not constructed as a local radio station serving Killen, and therefore the proposed change should not be considered a removal of existing service from the community of Killen, Alabama.<sup>5</sup> Pulaski further points out that the reallocation would not result in the relocation of Station WKSR-FM from a rural to an urban area; rather, the reallocation would result in a relocation farther from the nearest urban area.

4. Pulaski states that the community of Loretto, Tennessee, is listed in the census reports by the U.S. Bureau of the Census with a population of 1,665 persons. Pulaski further states that the city's administration includes a mayor, vice-mayor, two aldermen, and a city manager. Water, natural gas, and sewer services are provided by utilities maintaining offices in Loretto. Telephone service is provided by the Loretto Telephone Company. Each of these providers are located inside the city of Loretto. The city maintains a fire department and police department, and includes over 70 businesses, nine factories, three schools, eleven churches, and three banks. Finally, Pulaski points out that Loretto is larger than Killen, Alabama, which has a population of only 1,118 persons. Both loss and gain areas are already well-served with five or more services, except for an unpopulated area of 4.3 square kilometers in the gain area, which currently receives four services.

5. We have decided to seek comment on this proposal, although we are concerned that this "two-step" process, *i.e.*, a change of community followed by another change of community proposal before the first allotment change is effectuated, may waste administrative resources and, in some circumstances, may provide a means to circumvent our allotment policies. We therefore shall require Pulaski to explain in detail why it is seeking approval for a change of community to Loretto, Tennessee, rather than maintaining its earlier commitment to serve Killen, Alabama. We also seek comment on this two-step process from other interested parties.

6. In *Ashland*, Pulaski was required to submit a *Tuck* analysis<sup>6</sup> supporting the reallocation at Killen, because the change of community would cause Station WKSR-FM to place a 70dBu signal over more than 50 percent of the Florence, Alabama, Urbanized Area.<sup>7</sup> Our engineering analysis of the proposed reallocation of Channel 252C3 at Loretto indicates that, from the reference coordinates specified by Pulaski, Station WKSR-FM would place a 70 dBu signal over 42.6 percent of the Florence, Alabama, Urbanized Area. Because Station WKSR-FM would provide less than 50 percent coverage of the urbanized area from its specified reference coordinates at Loretto, we tentatively conclude that no

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priorities (2) and (3).

<sup>5</sup> Station WKSR-FM currently provides service to Pulaski, Tennessee, which would continue to be served by AM Station WKSR. See *Ashland*, 19 FCC Rcd at 6947.

<sup>6</sup> See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995).

<sup>7</sup> See *Ashland*, 19 FCC Rcd at 6947.

*Tuck* analysis should be required to demonstrate that Loretto is an independent community entitled to consideration as a first local service. We also seek comment on this tentative conclusion. Because the allotment of Channel 252C3 at either Killen or Loretto would provide a first local service to the designated community, both allotment alternatives satisfy the Commission's third allotment priority.

7. The proposed allotment at Loretto could be made with the site restrictions and reference coordinates indicated below.<sup>8</sup> Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Killen, Alabama, and Loretto, Tennessee:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Killen, Alabama	252C3	---
Loretto, Tennessee	---	252C3

**Proposed Coordinates for Channel 287A at Loretto, Tennessee:** 35-00-47 NL and 87-34-06 WL, at a site 13.8 km (8.5 miles) southwest of Loretto.

8. 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.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,<sup>9</sup> interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 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 any filing should be served on counsel for Pulaski, as follows:

Robert S. Stone, Esq.  
 McCampbell & Young, PC  
 2021 First Tennessee Plaza  
 Knoxville, Tennessee 37929

<sup>8</sup> The reference coordinates specified by Pulaski for Channel 252C3 at Loretto, Tennessee, are short-spaced to a reserved allotment for Station WKEA-FM, Channel 252C3, Scottsboro, Alabama, but meet the Commission's spacing requirements with respect to the transmitter site specified in the construction permit for Channel 252C3 at Scottsboro. We note that Pulaski, the petitioner in this proceeding, is also the licensee of Station WKEA-FM, Scottsboro, Alabama. Under these circumstances, we tentatively conclude that the proposed allotment of Channel 252C3 at Loretto meets the Commission's spacing requirements and is consistent with Section 73.208(a)(1) of the Commission's rules. 47 C.F.R. §73.208(a)(1).

<sup>9</sup> See 47 C.F.R. §§1.415 and 1.419.

10. 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 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 12<sup>th</sup> Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. 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.**

11. 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.<sup>10</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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.<sup>11</sup>

12. For further information concerning any of these proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, 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 the 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)

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<sup>10</sup> See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

<sup>11</sup> See 44 U.S.C. 3506(c)(4).

who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau**

**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 Pulaskis. 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.