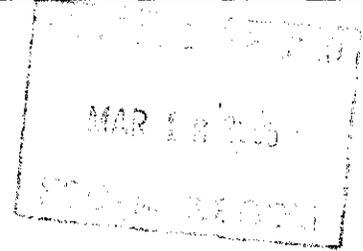


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-108
Table of Allotments,	)	RM-11178
FM Broadcast Stations.	)	
(Andover and Haverhill,	)	
Massachusetts)	)	

**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 Beanpot Broadcasting Corp. ("Beanpot"), licensee of Station WXRV(FM), Channel 223B, Haverhill, Massachusetts.<sup>1</sup> Pursuant to Sections 1.420(g) and (i) of the Commission's rules,<sup>2</sup> Beanpot proposes to change the community of license for Station WXRV(FM) from Haverhill to Andover, Massachusetts. Beanpot represents that the proposed allotment of Channel 223B at Andover is mutually exclusive with the current allotment of Channel 223B at Haverhill. Beanpot states that the proposal would not remove the sole local service from Haverhill, which would continue to be served by full-time Station WCCM(AM), Haverhill, Massachusetts. In addition, because Beanpot does not propose a change in its transmitter site, Beanpot states that the proposal will not result in any gain or loss of service or any change in Station WXRV(FM)'s current city-grade service to Haverhill.

2. *Modification of FM and TV Authorizations to Specify a New Community of License*<sup>3</sup> 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> Under those priorities, the existing allotment of Channel 223B at Haverhill would, at best, satisfy priority four, "other public interest matters." The proposed allotment of Channel

<sup>1</sup> Station WXRV(FM) is a pre-1964 grandfathered station.

<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 priorities (2) and (3).

223B at Andover, a town of 31,247 persons, therefore should be preferred, because it would satisfy priority three, "first local service."<sup>5</sup>

3. Both Haverhill and Andover are located within the Boston Urbanized Area, and there would be no increase in the signal coverage of that urbanized area, because Beanpot does not propose to change its transmitter site. Under the circumstances, we tentatively conclude that no *Tuck* analysis is necessary.<sup>6</sup>

6. The proposed allotment at Andover could be made with the site restrictions and reference coordinates indicated below.<sup>7</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 Andover and Haverhill, Massachusetts:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Andover, Massachusetts	----	223B
Haverhill, Massachusetts	223B	----

**The Proposed Coordinates for Channel 223B at Andover, Massachusetts are:** 42-46-23 NL and 71-06-01 WL, at a site 13.1 km (8.1 miles) north of Andover.

Concurrence in the allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

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 in paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,<sup>8</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,

<sup>5</sup>We have no record of an existing local radio station at Andover, although Beanpot states that WPAA(FM), a non-commercial educational station, provides local service to a small portion of Andover.

<sup>6</sup> See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>7</sup> The following existing approved short-spacings would not change: Grandfathered pre-1964 short-spacings to FM Stations WPRO, Channel 222B, Providence, Rhode Island, WWYZ, Channel 223B, Waterbury, Connecticut, and WBOS, Channel 225B, Boston, Massachusetts; a grandfathered pre-1989 short-spacing to FM Station WUMB, Channel 220A, Boston, Massachusetts; and a short-spacing requested by FM Station WFEX, Channel 221A, Peterborough, New Hampshire, pursuant to section 73.215 of the Commission's rules, 47 C.F.R. §73.215.

<sup>8</sup> See 47 C.F.R. §§1.415 and 1.419.

D.C. 20554. Additionally, a copy of any filing should be served on counsel for Beanpot, as follows:

Barry A. Friedman, Esq.  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036

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 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 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 a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>9</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, *see* 44 U.S.C. 3506 (c)(4).<sup>10</sup>

11. 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

<sup>9</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>10</sup> *See* 44 U.S.C. 3506(c)(4).

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) 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 Beanpots. 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.