

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



In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-140
Table of Allotments,)	RM-11225
FM Broadcast Stations.)	
(Arlington and Memphis, Tennessee,)	
and Saint Florian, Alabama))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 21, 2005

Released: March 23, 2005

Comment Date: May 10, 2005

Reply Date: May 25, 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 Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WEGR, Channel 274C1, Memphis, Tennessee. Pursuant to Sections 1.420(g) and (i) of the Commission's rules,¹ Clear Channel proposes to change the community of license for Station WEGR from Memphis to Arlington, Tennessee, where Channel 274C1 would provide a first local service. Clear Channel represents that the proposed allotment of Channel 274C1 at Arlington is mutually exclusive with the current allotment of Channel 274C1 at Memphis. The proposal would not remove the sole local service from Memphis, which would continue to be served by numerous AM and FM stations. In addition, because Clear Channel does not propose a change in its transmitter site, the proposal will not result in any loss of service for Station WEGR's current city-grade service to Memphis.² Clear Channel represents that, if its petition is granted, it will file an application for Channel 274C1 at Arlington and construct the facilities as authorized. In order to accommodate the proposed change of community, Clear Channel further proposes to change the reference coordinates for vacant Channel 274A at Saint Florian, Alabama.

2. *Modification of FM and TV Authorizations to Specify a New Community of License*³ 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*

¹ 47 C.F.R. §§ 1.420(g) and (i).

² Clear Channel states that it desires to increase the power and antenna height of Station WEGR(FM)'s facilities from its current maximum of 87 kW at 288 meters to the Class C1 maximum of 100 kW and 299 meters, resulting in a predicted net gain in area of 986 square kilometers and in population of 15,721 persons.

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

*Policies and Procedures.*⁴ Under those priorities, the existing allotment of Channel 274C1 at Memphis satisfies priority four, "other public interest matters." The proposed allotment of Channel 274C1 at Arlington, a town of 2,657 persons, therefore should be preferred, because it would satisfy priority three, "first local service."

3. Station WEGR currently provides a 70 dBu signal to 100 percent of the Memphis Urbanized Area, and the 70 dBu signal contour of Station WEGR at Arlington would continue to cover 100 percent of the Memphis Urbanized Area. Arlington is not located in the Memphis Urbanized Area. Clear Channel makes a showing that the proposed change of community to Arlington is entitled to consideration as a first local service under the requirements set forth in *Tuck*, but we tentatively conclude that no *Tuck* analysis is necessary, given the fact that Station WEGR is currently licensed to Memphis.⁵

4. In order to accommodate the reallocation of Channel 274C1 at Arlington, Tennessee, Clear Channel proposes to modify the site of Channel 274A at Saint Florian, Alabama, consistent with the *Notice of Proposed Rule Making* released in MB Docket No. 04-80 on March 26, 2004.⁶ In that *Notice*, we proposed the reservation of Channel 274A at Saint Florian, Alabama, for noncommercial educational use, pursuant to a petition for rule making filed by American Family Association. The *Notice* stated, *inter alia*, that a party may file comments identifying a site at which a proposed reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Clear Channel represents that the new coordinates that it proposes for Channel 274A at Saint Florian will permit Channel 274A to provide service to 133,399 persons within the 60 dBu contour of the proposed station, which is 7,141 more than the 126,255 persons that could be served from the original allotment site. In addition, Clear Channel states that from its proposed new reference coordinates, 20,089 persons (15 percent of the total number of persons served) would receive a second noncommercial educational radio service, as compared to 16,810 persons from the original allotment site. Clear Channel filed comments in MB Docket 04-80 on the same date that it submitted its petition for rule making in this proceeding. Clear Channel asks that the Commission modify the site of vacant Channel 274A at Saint Florian, Alabama, in this proceeding, without awaiting the outcome of MB Docket No. 04-80, in order to promptly provide a first local service to Arlington, Tennessee.

5. The proposed allotment changes could be made with the site restrictions and reference coordinates indicated below. 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 Arlington and Memphis, Tennessee. We also seek further comment on the proposed change in reference coordinates for Channel 274A at

⁴ 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).

⁵ See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), and *East Long Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (MMB 1995).

⁶ *Anniston, Alabama, Saint Florian, Alabama, Patagonia, Arizona, Pima, Arizona, Somerton, Arizona, Sutter Creek, California, Westley, California, Olathe, Colorado, Horseshoe Beach, Florida, Live Oak, Florida, Asbury, Iowa, Keosauqua, Iowa, Merville, Iowa, Rudd, Iowa, Weiser, Idaho*, 19 FCC Rcd 5,333 (MB 2004).

Saint Florian, Alabama, and on Clear Channel's proposal to implement the change in reference coordinates within this proceeding, rather than in MB Docket No. 04-80.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Arlington, Tennessee	----	274C1
Memphis, Tennessee	246C1,259C,274C1, 283C1,290C	246C1,259C,283C1,290C

Proposed Coordinates for Channel 274C1 at Arlington, Tennessee: 35-16-33 NL and 89-46-38 WL, at a site 10.8 km (6.7 miles) west of Arlington (no change in coordinates).

Proposed New Coordinates for Channel 274C1 at Saint Florian, Alabama: 34-50-12 NL and 87-37-27 WL, at a site 4.1 km (2.5 miles) south of Saint Florian.

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

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁷ interested parties may file comments on or before May 10, 2005, and reply comments on or before May 25, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on counsel for Clear Channel, as follows:

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

8. 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. We caution parties that the Commission continues 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 Tennessee 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

⁷ See 47 C.F.R. §§1.415 and 1.419.

mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, TW-A325, 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.**

9. 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.⁸ 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 107-198.⁹

10. 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) 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

⁸ 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).

⁹ See 44 U.S.C. 3506(c)(4).

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 Clear Channels. 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.