

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

SEP 27 3 14 PM '05

DIST

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-269
Table of Allotments,)	RM-11267
FM Broadcast Stations.)	
(Allegan, Otsego and Mattawan, Michigan))	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 23, 2005

Released: September 26, 2005

Comment Date: November 17, 2005

Reply Comment Date: December 2, 2005

By the Assistant Chief, Audio Division, Media Bureau

1. The Audio Division has before it a Petition for Rule Making filed by Forum Communications, Inc. ("Petitioner"), licensee of FM Station WZUU, proposing the substitution of Channel 223A for Channel 222A at Allegan, reallocation of Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modification of the FM Station WZUU license accordingly. Petitioner stated its intentions to file an application for Station WZUU at Mattawan, if reallocated.

2. Petitioner proposes the substitution of Channel 223A for Channel 222A at Allegan, reallocation of Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modification of the FM Station WZUU license accordingly. To prevent removal of Allegan's sole local service, Petitioner also requests the reallocation of co-owned Station WQXC-FM, Channel 265A from Otsego to Allegan, Michigan and modification of the Station WQXC-FM license accordingly.¹ In support of its reallocation proposal, Petitioner states that Mattawan is an incorporated community located in Van Buren County with a 2000 U.S. Census population of 2,536 persons. Mattawan has its own elected officials and local government, schools, library, police and fire department and water distribution system. Mattawan also has a pharmacy, optometrist, community and civic organizations, churches, and numerous commercial establishments. There is a local newspaper, *The Courier Leader* that serves the residents of Mattawan. Petitioner states that the proposed Mattawan reallocation for Station WZUU could provide primary service to a population of 259,371 persons. Petitioner asserts that the entire loss area, consisting of 72,333 persons is considered well-served because it would continue to receive service from at least seven aural services.

3. Petitioner filed its reallocation request pursuant to Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed

¹ Petitioner notes that Station WQXC-FM is a pre-1989 "grandfathered" short-spaced Class A station. Petitioner states that the Commission, however, allows such a station to change its community of license when its is not changing its transmitter site. Citing *Worcester and Westborough, Massachusetts*, 18 FCC Rcd 23750 (MB 2003) and *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (MMB 1999).

allotment.² Petitioner states that the proposed reallocation of Channel 223A at Mattawan, Michigan is mutually exclusive with the current authorized facilities of FM Station WZUU, Channel 222A, Allegan, Michigan. Moreover, the proposed reallocation of Channel 265A to Allegan, Michigan is mutually exclusive with the current authorized facilities of Station WQXC-FM, Channel 265A at Otsego, Michigan.

4. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.³ In this regard, Petitioner states that the proposed Channel 223A reallocation at Mattawan would provide a first local service, priority (3). In this instance, the proposed reallocation of Station WQXC-FM would prevent removal of sole existing local service at Allegan. The retention of Station WQXC-FM at Otsego triggers priority (4), other public interest matters because AM Station WAKV would continue to provide local service at Otsego. As such, the reallocation proposal results in a preferential arrangement of allotments based on priority (3), first local service.

5. Petitioner states that Mattawan is not located in an urbanized area. However, the proposed Mattawan reallocation would cover fifty percent of the Kalamazoo Urbanized area.⁴ As such, Petitioner submitted a *Tuck* showing. Under *Tuck*, we consider three criteria: (1) the signal population coverage; (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area.⁵ The interdependence factor is the most important criteria considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. We tentatively conclude that Mattawan is an independent community entitled to a first local preference under *Tuck*.

6. We find that the reallocation proposal warrants consideration because it could provide the community of Mattawan with a first local service. A staff engineering analysis has determined that Channel 223A can be allotted to Mattawan in conformity with the Commission's rules, provided there is a site restriction of 10.6 kilometers (6.6 miles) southeast at reference coordinates 42-07-45 NL and 85-43-13 WL. Additionally, Channel 265A can be allotted to Allegan in compliance with the Commission's rules, at

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 7394 (1990).

³ 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).

⁴ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (MMB 1995) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*").

⁵ The Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M.Bur. 1996).

the Station WQXC(FM) existing transmitter site at coordinates 42-30-31 NL and 85-46-08 WL. As previously noted, Station WQXC-FM is a pre-1989 "grandfathered" short-spaced Class A station. Petitioner states that the Commission, however, allows such a station to change its community of license in instances where the station is not changing its transmitter site. Canadian concurrence has been requested because the proposed reallocations are both located within 320 kilometers (199 miles) of the U.S.-Canadian border. In accordance with the provisions of Section 1.420(i) of the Commission's rules, we shall not accept competing expressions of interest pertaining to the use of Channel 223A at Mattawan or Channel 265A at Allegan.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Allegan, Michigan	222A	265A
Mattawan, Michigan	-----	223A
Ostego, Michigan	265A	-----

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, interested parties may file comments on or before November 17, 2005, and reply comments on or before December 2, 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:

Matthew H. McCormick, Esq.
 Counsel for Forum Communications, Inc.
 Reddy, Begley & McCormick, LLP
 1156 15th Street, N.W., Suite 610
 Washington, D.C. 20005-1770

10. 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 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.⁶ 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).

12. 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

⁶ *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).

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) With respect to petitions for rule making which conflict with the proposals 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 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. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.