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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	MB Docket No. 06-19
FM Broadcast Stations.	)	RM-11288
(Sumrall, Mississippi)	)	
	)	
Reclassification of License	)	BLH-19860609KD
of FM Station WUSW, Hattiesburg, Mississippi	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 2006 **Released: February 6, 2006**

Comment Date: March 30, 2006
Reply Comment Date: April 14, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Unity Broadcasting, permittee of FM Station WGDQ, Channel 226A, Hattiesburg, Mississippi, ("Petitioner") requesting to amend the FM Table of Allotments by upgrading Channel 226A to Channel 226C3, reallotting Channel 226C3 to Sumrall, Mississippi, as that community's first competitive local aural transmission service, and modifying the license of Station WGDQ accordingly. To accommodate this allotment, Petitioner requests that FM Station WUSW, Channel 279C, Hattiesburg, Mississippi, be reclassified as a Class C0 station.

2. FM Station WUSW operates on Channel 279C with less than the minimum Class C antenna height above average terrain ("HAAT") of 451 meters HAAT. As a result, FM Station WUSW is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission's *Second Report and Order*, MM Docket No. 98-93,[1] Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission's rules.

3. Pursuant to the requirements set forth in Section 73.3573, Note 4, we issued an *Order to Show Cause*[2] directed to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of FM Station WUSW, Hattiesburg, Mississippi, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise explain why the station not be reclassified. Clear Channel did not file a response. Therefore, in accordance with the Commission's reclassification procedures noted above, the license for FM Station WUSW has been reclassified to specify operation on Channel 279C0 instead of Channel 279C at Hattiesburg. This station retains its current transmitter site.[3]

4. The instant Petition for Rule Making was filed pursuant to 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

[1] *See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649 (2000).

[2] *See Reclassification of License of Station WUSW(FM), Hattiesburg, Mississippi*, 20 FCC Rcd 17223 (MB 2005).

[3] The reference coordinates for the Channel 279C0 allotment at Hattiesburg, Mississippi are 31-31-37 NL and 89-08-07 WL.

community of license without affording other interested parties an opportunity to file competing expressions of interest.[4] The proposed use of Channel 226C3 at Sumrall is mutually exclusive with Station WGDQ's existing authorization at Hattiesburg, Mississippi. Petitioner asserts that the allotment of Channel 226C3 to Sumrall would not deprive Hattiesburg of its sole local transmission outlet, because Hattiesburg would continue to be served locally by three AM stations and five FM stations. Petitioner states that the Commission's FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*[5] would be served because Petitioner would provide a first competitive local service to Sumrall. Because Petitioner's change of community proposal for Station WGDQ is consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall propose to modify the authorization of Station WGDQ without entertaining competing expressions of interest in the use of Channel 226C3 at Sumrall, Mississippi, or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

5. We find that the proposal warrants consideration because it could provide a second local aural service to a community. Channel 226C3 can be allotted with a site restriction of 19.5 kilometers (12.1 miles) northeast of Sumrall, at reference coordinates of 31-33-15 NL and 89-24-50 WL.

6. Accordingly, we seek comment 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:

	Channel No.	
City	Present	Proposed
Sumrall, Mississippi	247A	226C3, 247A
Hattiesburg, Mississippi	221A, 226A, 279C0, 283C1	221A, 279C0, 283C1

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 by paragraph 2 of the *Appendix* before a channel will be allotted. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before March 30, 2006, and reply comments on or before April 14, 2006, 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. 205454. Any counterproposal filed in this proceeding need only protect FM Station WUSW, Hattiesburg, Mississippi, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Jerrold Miller, Esq.
Miller and Neely, P.C.
6900 Wisconsin Ave., Suite 704
Bethesda, Maryland 20815

[4] *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).

[5] 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).

8. Parties 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 the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **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.[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).

10. For further information concerning a proceeding listed above, 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 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 a particular docket unless the Commission specifically waives this service requirement.

[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).

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

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.