

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 06-77
Table of Allotments,) RM-11324
FM Broadcast Stations.)
(Hodgenville, Horse Cave, Lebanon,)
Lebanon Junction, New Haven and Springfield,)
Kentucky, and Belle Meade, Goodlettsville,)
Hendersonville, Manchester, and Millersville,)
Tennessee))

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NOTICE OF PROPOSED RULE MAKING

Adopted: April 5, 2006

Released: April 7, 2006

Comment Date: May 30, 2006

Reply Comment Date: June 13, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a proposal filed jointly by Elizabethtown CBC, Inc., licensee of Station WKMO, Channel 292A, Hodgenville, Kentucky, and Station WTHX, Channel 297A, Lebanon Junction, Kentucky; CBC of Marion County, Inc., licensee of Station WLSK, Channel 265A, Lebanon, Kentucky; Washington County CBC, Inc., licensee Station WAKY-FM, Channel 274A, Springfield, Kentucky; Newberry Broadcasting, Inc., licensee of Station WHHT, Channel 294A, Horse Cave, Kentucky; and Cumulus Licensing LLC, licensee of Station WNFN, Channel 294A, Belle Meade, Tennessee, Station WWTN, Channel 259C, Manchester, Tennessee, Station WQQK, Channel 221A, Hendersonville, Tennessee, and Station WRQQ, Channel 246C2, Goodlettsville, Tennessee, (collectively, the "Joint Parties"). The Amended Proposal sets forth interrelated proposals involving nine existing stations in Kentucky and Tennessee. We will discuss each of these proposals below.

I. PRELIMINARY MATTER

2. In *C omersville, Madison and Richmond, Indiana, Erlanger and Lebanon, Kentucky, and Norwood, Ohio, and Lebanon, Lebanon Junction, New Haven and Springfield, Kentucky*, we dismissed a similar proposal filed by the Joint Parties¹ because the proposed reallocation of Channel 259C from Manchester to Hendersonville, Tennessee, and modification of the Station WWTN license to specify Hendersonville as the community of license, would contravene Section 73.208(a)(1)(i) of the Commission's rules.² Specifically, this reallocation would be short-spaced to the pending modification application for

¹ Report and Order, 20 FCC Rcd 1887 (MB 2005).

² 47 C.F.R. § 73.208(a)(1)(i).

Station WRJF, Channel 260C3, Eva, Alabama.³ The Joint Parties filed a Petition for Reconsideration directed to that dismissal. Thereafter, Cumulus Licensing LLC, licensee of Station WWTN and one of the Joint Parties, dismissed its pending application to maintain Class C status for Station WWTN and accepted the modification of its license to Class C0.⁴ In this regard, a Channel 259C0 reallocation to Hendersonville would not be short-spaced to the pending application at Eva. As requested by the Joint Parties, we are going forward with the Amended Proposal in this *Notice*.⁵

3. The Joint Parties' proposal includes nine city of license modifications. These requests are filed pursuant to Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest.⁶ In evaluating a 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*.⁷

Belle Meade and Millersville, Tennessee

4. The Joint Parties propose the substitution of Channel 294C3 for Channel 294A at Belle Meade, reallocation of Channel 294C3 to Millersville, and modification of its Station WNFN license to specify operation on Channel 294C3 at Millersville, Tennessee.⁸ This will result in a first local service to Millersville. As discussed below, Belle Meade would continue to receive local service from Station WRQQ. The area and population that will lose service will continue to receive in excess of five aural

³ File No. BPH-20031009AAY.

⁴ On January 13, 2006, Cumulus Licensing requested dismissal of its application (File No. BPH-20040827ACB) and accepted Class C0 status.

⁵ In *Taccoa, Sugar Hill and Lawrenceville, Georgia*, Memorandum Opinion and Order, 16 FCC Rcd 21191 (MMB 2001), we announced that we would carefully review any counterproposal filed by the initial rulemaking proponent and require an explanation as to why the counterproposal could not have been advanced in the original petition for rule making. In the absence of such an explanation, the subsequent proposal will be processed as a new petition for rule making. The Joint Parties have not addressed this issue. Accordingly, we are processing the Amended Proposal in a separate proceeding.

⁶ See *Modification of FM and TV Authorizations to Specify a new Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁷ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁸ The reference coordinates for the proposed Channel 294C3 allotment at Millersville, Tennessee, are 36-26-24 and 86-37-39.

services.⁹

5. We recognize that both Belle Meade and Millersville are located within the Nashville-Davidson Urbanized Area and that Station WNFN will provide a 70 dBu signal to more than 20 percent of the Urbanized Area. We are concerned with the potential migration of stations from lesser served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making a first local service preference determination, we apply existing precedent.¹⁰ We consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most importantly, the independence of the suburban community. Because Belle Meade and Millersville are already located in the Nashville-Davidson Urbanized Area, this relocation does not implicate Commission policy with respect to the migration of stations from rural to urban areas.¹¹ In any event, the Joint Parties have submitted a *Tuck* exhibit demonstrating that Millersville is independent of the Nashville-Davidson Urbanized Area and entitled to consideration as a first local service.

6. In order to accommodate Channel 294C3 at Millersville, the Joint Parties propose the substitution of Channel 293A for Channel 294A at Horse Cave, Kentucky, and modification of the Station WHHT license to specify operation on Channel 293A.¹² Newberry Broadcasting, Inc., licensee of Station WHHT and one of the Joint Parties, has agreed to the channel substitution. To accommodate the Channel 293A substitution at Horse Cave, the Joint Parties propose the substitution of Channel 297A for Channel 292A at Hodgenville, Kentucky, and modification of the Station WKMO license to specify operation on Channel 297A.¹³ Elizabethtown Broadcasting, Inc., licensee of Station WKMO and one of the Joint Parties, has agreed to the channel substitution and change in transmitter site. In order to accommodate the Channel 297A substitution at Hodgenville, the Joint Parties propose the substitution of Channel 257A for Channel 297A at Lebanon Junction, Kentucky, and modification of the Station WTHX license to specify operation on Channel 257A.¹⁴ Elizabethtown Broadcasting, Inc. is also the licensee of Station WTHX and has again

⁹ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

¹⁰ *See e.g. Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*").

¹¹ *See Boulder and Lafayette, Colorado*, Notice of Proposed Rule Making, 11 FCC Rcd 3632 (MMB 1996); *East Los Angeles, Long Beach and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864 (MMB 1995).

¹² The reference coordinates for the Channel 293A allotment at Horse Cave, Kentucky, are 37-13-57 and 85-52-06.

¹³ The reference coordinates for the Channel 297A allotment at Hodgenville, Kentucky, are 37-40-34 and 85-40-57.

¹⁴ The reference coordinates for the Channel 257A allotment at Lebanon Junction, Kentucky, are 37-44-37 and 85-38-52.

agreed to the channel substitution and change in transmitter site.

7. In order to replace the loss of the sole local service at Belle Meade, the Joint Parties propose the reallocation of Channel 246C2 from Goodlettsville, Tennessee, to Belle Meade, and modification of the Station WRQQ license to specify Belle Meade as the community of license.¹⁵ This reallocation will not require a change a change in the Station WRQQ transmitter site. To avoid depriving Goodlettsville of its sole local service, the Joint Parties propose the reallocation of Channel 221A from Hendersonville to Goodlettsville and modification of the Station WQQK license to specify Goodlettsville as the community of license.¹⁶ This reallocation does not require relocation of the Station WQQK transmitter site and Cumulus Licensing LLC, licensee of Station WQQK and one of the Joint Parties, has agreed to the change in community of license. In order to avoid the loss of the sole local service at Hendersonville, the Joint Parties propose the substitution of Channel 259C0 for Channel 259C at Manchester, Tennessee, reallocation of Channel 259C0 from Manchester to Hendersonville, and modification of the Station WWTN license to specify operation on Channel 259C0.¹⁷ Cumulus Licensing LLC, licensee of Station WWTN, has agreed to the reclassification and change in community of license.¹⁸

Springfield and New Haven, Kentucky

8. The Joint Parties also propose the reallocation of Channel 274A from Springfield to New Haven, Kentucky, and modification of the Station WAKY-FM license to specify New Haven as the community of license.¹⁹ This will provide a first local service to New Haven. New Haven is an incorporated community with a 2000 U.S. Census population of 849 persons. This reallocation will result in a net service gain to 47,602 persons while the population losing service will continue to receive at least five aural services. New Haven is not located in any Urbanized Area and Station WAKY-FM will not provide a 70 dBu signal to any portion of an Urbanized Area. Washington County CBC, Inc., one of the Joint Parties, is the licensee of Station WAKY-FM. In order to replace the loss of the sole local service at Springfield, the Joint Parties propose the substitution of Channel 265A for Channel 265C3 at Lebanon, Kentucky, reallocation of Channel

¹⁵ The reference coordinates for the Channel 246C2 allotment at Belle Meade, Tennessee, are 36-17-50 and 86-45-11.

¹⁶ The reference coordinates for the Channel 221A allotment at Goodlettsville, Tennessee, are 36-17-50 and 86-45-11.

¹⁷ The reference coordinates for the Channel 259C0 allotment at Hendersonville, Tennessee, are 35-49-03 and 86-31-24.

¹⁸ In a separate proceeding in MB Docket No. 05-17, the Joint Parties filed a Petition for Reconsideration directed against our action dismissing its proposal which included the proposed reallocation of Channel 259C from Manchester to Hendersonville as a Class C allotment. *Connersville, Madison and Richmond, Indiana, Erlanger, Lebanon, Lebanon Junction, New Haven and Springfield, Kentucky, and Norwood, Ohio*, Report and Order, 20 FCC Rcd 18871 (MB 2005). The Joint parties have requested that the Petition for Reconsideration in MB Docket No. 05-17 be dismissed.

¹⁹ The reference coordinates for the Channel 274A allotment at New Haven, Kentucky, are 37-46-07 and 85-35-57.

265A to Springfield, and modification of the Station WLSK license to specify operation on Channel 265A at Springfield.²⁰ CBC of Marion County, Inc., one of the Joint Parties, has agreed to the downgrade and reallocation. Lebanon will continue to receive local service from AM Station WLBN.

9. In view of the fact that this proposal will result in two communities receiving first local service, we believe that it would serve the public interest to solicit comments on this proposal. Therefore, we seek comments on the proposed amendments to the FM table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hodgenville, Kentucky	292A	297A
Horse Cave, Kentucky	294A	293A
Lebanon, Kentucky	265C3	-----
Lebanon Junction, Kentucky	297A	257A
New Haven, Kentucky	-----	274A
Springfield, Kentucky	274A	265A
Belle Meade, Tennessee	294A	246C2
Goodlettsville, Tennessee	246C2	221A
Hendersonville, Tennessee	221A	259C0
Manchester, Tennessee	259C0, 268A	268A
Millersville, Tennessee	-----	294C3

10. 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.

11. Interested parties may file comments on or before May 30, 2006, and reply comments on or before June 13, 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, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Mark N. Lipp, Esq.
Vinson & Elkins, L.L.P.
1455 Pennsylvania Ave., NW
Suite 600
Washington, D.C. 20004

John F. Garziglia, Esq.
Womble, Carlyle, Sandridge & Rice
1401 Eye Street, NW
Washington, D.C. 20006

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act

²⁰ The reference coordinates for the Channel 265A allotment at Springfield, Kentucky, are 37-38-50 and 85-11-50.

of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Robert Hayne, 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 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 a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding 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

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, 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 Procedures. 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 Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) 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 Sections 1.415 and 1.420 of the Commission's Rules and Regulations, 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 Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, 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 Twelfth Street, SW., Washington, D.C.