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

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In the matter of	)	
	)	
	)	MB Docket No. 07-296
Amendment of Section 73.202(b),	)	RM-11412
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Irvington, Kentucky and French Lick, Indiana)	)	
	)	

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NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE

Adopted: January 9, 2008 **Released: January 11, 2008**

Comment Date: March 3, 2008
Reply comment Date: March 18, 2008

By the Assistant Chief, Audio Division, and Media Bureau:

1. The Audio Division has before it a petition for rule making filed by L. Dean Spencer ("Petitioner"), proposing to allot Channel 261A at Irvington, Kentucky. Petitioner has concurrently filed a FCC Form 301 new station application[1] for Channel 261A at Irvington, along with a filing fee pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.[2] Petitioner certifies in its petition, that if the requested FM channel is allotted, it will participate in the auction for the channel.

2. To accommodate the proposed Irvington allotment, Petitioner also requests the substitution of Channel 229A for Channel 261A at French Lick, Indiana and modification of the Station WFLQ (FM) license accordingly. To this end, we are issuing an *Order to Show Cause* directed to Willtronics Broadcasting, licensee of Station WFLQ(FM) to show cause why its license should not be modified to specify operation on Channel 229A. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.[3]

3. Whenever an existing licensee is ordered to switch frequencies to accommodate a channel allotment, we require the proponent of the channel allotment to make a commitment to reimburse the

[1] File No. BNPH-20071010ACC.

[2] *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services,* Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*")

[3] *See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, Order, 2 FCC Rcd 3327 (1987).

affected station for the costs incurred in changing frequencies.[4] Petitioner states that provided that its construction permit is granted, he will reimburse the licensee of Station WFLQ for reasonable costs associated with changing to Channel 229A at French Lick.

4. In support of the proposal, Petitioner states that Irvington, Kentucky is a community for allotment purposes. It is a city listed in the U.S. Census as a Census Designated Place, with a U.S. Census population or 1,257 persons. It was founded in 1888 by railroad engineer Eugene Cornwell, who named it after his hometown, Irvington, New York. The city of Irvington has a mayor, six-member city council, clerk/treasurer, city attorney, fire chief, police chief, and director of public works. Petitioner also states that Channel 261A can be allotted at the community in accordance with the Commission's minimum distance separation and community coverage requirements as long as the requested substitution of Channel 229A for Channel 261A at French Lick is made.

5. We believe the proposed allotment warrants consideration since it could provide the community of Irvington with its first local aural transmission service, and the required channel substitution would not deprive the community of French Lick of its local aural transmission service.

6. Channel 261A can be allotted at Irvington, Kentucky at a site 13.8 kilometers (8.5miles) northwest of the community.[5] Channel 229A can be substituted for Channel 261A at French Lick at Station WFLQ's existing site 5.1 kilometers (3.2 miles) north of the community.[6]

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

	Channel No.	
City	**Present**	**Proposed**
Invington, Kentucky	---	261A

8. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Willtronics Broadcasting, licensee of Station WFLQ(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 229A in lieu of Channel 261A at French Lick, Indiana.

9. Pursuant to Section 1.87 of the Commission's Rules, Willtronics Broadcasting., licensee of Station WFLQ(FM), may, no later than March 18, 2008 file a written statement showing with particularity why its construction permit should not be modified as proposed in this *Notice of Proposed Rule Making and Order to Show Cause.* The Commission may call upon the licensee to furnish additional information. If the licensee raises any substantial and material questions of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Rules. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the licensee will be deemed to have consented to a modification as proposed in this *Notice of Proposed Rule Making and Order to Show Cause* and a final Order will be issued if the modification is found to be in the public interest.

[4] *See Circleville, Ohio,* 8 FCC 2d. 159 (1967).

[5] The coordinates for Channel 261A at Irvington are 37-56-52 NL and 86-24-54 WL.

[6] The coordinates for Channel 329A at French Lick are 38-35-41 NL and 86-36-48 WL.

10. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Imaging Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

Willtronics Broadcasting
P.O. Box 100
French Lick, Indiana 47432

11. 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.

12. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 3, 2008, and reply comments on or before March 18, 2008, 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:

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1401 Eye Street, N.W.
Seventh Floor
Washington, D.C. 20005
(Counsel to L. Dean Spencer)

13. 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 Pennsylvania 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, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, 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.**

14. 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.[7] 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,

[7] *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend C.F.R. Sections 73.202(b), 73.504 and 73.606(b).* 46 FR 11549 (February 9, 1981).

see 44 U.S.C. 3506(c)(4).

15. For further information concerning this proceeding, contact Victoria M. McCauley, 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 found 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 Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* 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* Section 1.420(d) of the Commission's Rules).

(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 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 Rulemaking* 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, 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 Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.