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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 08-26
Table of Allotments,	)	RM-11418
FM Broadcast Stations.	)	
(Evart, Ludington, Pentwater, and	)	
Manistee, Michigan)	)	

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NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE

Adopted: March 12, 2008 **Released: March 14, 2008**

Comment Date: May 5, 2008
Reply Date: May 20, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Roy E. Henderson ("Petitioner"), proposing the allotment of Channel 274A at Evart, Michigan, as that community's first local service. Petitioner filed a FCC Form 301 application proposing allotment of Channel 274A at Evart, Michigan.[1] Petitioner submitted a filing fee for that application 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 states that if Channel 274A is allotted at Evart, Petitioner will file an application for Channel 274A, and, if his application is granted, Petitioner will build the station.

2. In order to accommodate the proposed allotment of Channel 274A at Evart, Petitioner requests that Channel 242A be substituted for Channel 274A at Pentwater, Michigan.[3] In order to accommodate that channel substitution, Petitioner further proposes to substitute Channel 249A for vacant Channel 242A, Ludington, Michigan, at revised reference coordinates. Petitioner has filed a FCC Form 301 application for Channel 249A at Ludington,[4] has paid the requisite fee, and represents that he will participate in the auction for that channel and, if selected as the Permittee, will build and operate a new station on that channel. Finally, in order to accommodate the substitution of FM Channel 249A for

[1] File No. BNPH-20071128AAL.

[2] Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*").

[3] At Petitioner's request, we are issuing a show cause order to Bay View Broadcasting, Inc., to determine whether its license for FM Station WMOM, Channel 274A, Pentwater, Michigan, should be modified to specify operation on alternate equivalent FM Channel 242A. See paragraphs 7-8 and 11, *infra*.

[4] File No. BNPH-20071128AAK.

vacant Channel 242A at Ludington, Petitioner proposes to substitute FM Channel 282A for Channel 249A at Manistee, Michigan.[5]

3. Evart is a city with a population of 1,738 persons. Evart has a city manager, its own police and fire departments, a department of public works, a recreation department, and provides its own water and sewer services. It also has its own Evart Municipal Airport, its own zip code, six churches, and 136 members of the Evart Area Chamber of Commerce. Evart is a community for allotment purposes and is deserving of its own local radio service. This proposal warrants consideration because it complies with our technical requirements and could serve the public interest.

4. The proposed allotment at Evart and the channel substitution at Ludington can 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 Evart, Michigan, and Ludington, Michigan:

Community	Present	Proposed
Evart, Michigan	---	274A
Ludington, Michigan	242A	249A

Proposed Coordinates for Channel 274A at Evart, Michigan: 44-01-43 NL and 85-17-51 WL, at a site 14.6 km (9.1 miles) north of Evart.

Proposed Coordinates for Channel 2494A at Ludington, Michigan: 44-01-53 NL and 86-24-57 WL, at a site 9.0 km (5.6 miles) north of Ludington.

5. 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.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,[6] interested parties may file comments on or before May 5, 2008, and reply comments on or before May 20, 2008, 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 Petitioner, as follows:

[5] At Petitioner's request, we are issuing a show cause order to Synergy Media, Inc., to determine whether its license for FM Station WMLZ, Channel 249A, Manistee, Michigan, should be modified to specify operation on alternate equivalent FM Channel 282A. See paragraphs 9-10 and 12, *infra*.

[6] *See* 47 C.F.R. §§1.415 and 1.419.

Robert J. Buenzle, Esq.
Law Offices of Robert J. Buenzle
11710 Plaza America Drive
Suite 2000
Reston, Virginia 20190
(Counsel for Roy E. Henderson)

7. In order to proceed with our analysis of the proposals set forth in the Petition for Rulemaking and to resolve this proceeding, it is further necessary to issue an *Order to Show Cause* directed to Bay View Broadcasting, Inc., to show cause why its Station WMOM(FM) license should not be modified to specify operation on Channel 242A in lieu of Channel 274A at Pentwater, Michigan. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license or construction permit if such action is in the public interest. Section 316(a) requires that we notify the affected stations of the proposed action, the public interest reasons for the action, and afford at least 30 days to respond. This procedure is now set forth in Section 1.87 of the Commission's Rules.[7] In this instance, the substitution of Channel 242A at Pentwater will accommodate the allotment of Channel 274A at Evart, making possible a first local service for Evart, Michigan. We consider this to be a significant public interest benefit.

8. The Station WMOM(FM) license at Pentwater can be modified to specify operation on Channel 242A at its currently authorized transmitter site. The petitioner has agreed to reimburse the licensee of Station WMOM(FM), Channel 274A, Pentwater, Michigan, for the reasonable costs incurred in connection with the change.

9. It is further necessary to issue an *Order to Show Cause* directed to Syngergy Media, Inc., to show cause why its Station WMLQ(FM) license should not be modified to specify operation on Channel 282A in lieu of Channel 249A at Manistee, Michigan. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license or construction permit if such action is in the public interest.[8] The substitution of Channel 282A for Channel 249A at Manistee will accommodate the substitution of Channel 249A for Channel 274A at Pentwater, making possible the allotment of Channel 274A as a first local service at Evart, Michigan. The proposed channel substitution at Manistee thus will result in significant public interest benefits.

10. The Station WMLQ(FM) license at Manistee can be modified to specify operation on Channel 282A at its currently authorized transmitter site. The petitioner has agreed to reimburse the

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

[8] *Id. See also* 47 C.F.R. §1.87.

licensee of Station WMLQ(FM), Channel 249A, Manistee, Michigan, for the reasonable costs incurred in connection with the change.

11. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Bay View Broadcasting, Inc., licensee of Station WMOM(FM), Channel 274A, Pentwater, Michigan, SHALL SHOW CAUSE why its license should not be changed to specify operation on Channel 242A in lieu of Channel 274A.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Synergy Media, Inc., licensee of Station WMLQ(FM), Channel 249A, Manistee, Michigan, SHALL SHOW CAUSE why its license should not be changed to specify operation on Channel 282A in lieu of Channel 249A.

13. Pursuant to Section 1.87 of the Commission's Rules, Bay View Broadcasting, Inc., licensee of Station WMOM(FM), Pentwater, Michigan, and Synergy Media, Inc., licensee of Station WMLQ(FM), Manistee, Michigan, each may, no later than May 5, 2008, file a written statement showing with particularity why its designated license should not be modified as proposed in this *Order to Show Cause*. The Commission may call upon each such licensee to furnish additional information. If the licensee raises a substantial and material question 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 Order to Show Cause and a final Order will be issued if the modification is found to be in the public interest.

14. IT IS FURTHER ORDERED, That a copy of this Notice of Proposed Rule Making and Order to Show Cause shall be sent BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following:

Radio Station WMOM(FM)
Bay View Broadcasting, Inc.
4359 South Howell Avenue
Suite 106
Milwaukee, Wisconsin 53207

Dennis J. Kelly, Esq.
Law Offices of Dennis J. Kelly
Post Office Box 41177
Washington, D.C. 20018
(Counsel for Bay View Broadcasting, Inc.)

Radio Station WMLQ(FM)
Synergy Media, Inc.
Post Office Box 855
Ludington, Michigan 49431

Howard M. Liberman, Esq.
Drinker, Biddle, & Reath, LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005-1208
(Counsel for Synergy Media, Inc.)

15. 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 (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.**

16. 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.[9] 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.[10]

17. For further information concerning 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

[9] *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).

[10] *See* 44 U.S.C. 3506(c)(4).

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

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 Puopolos. 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.