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

MAILED

JAN 26 2009

In the Matter of)
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)
Amendment of Section 73.202(b))
Table of Allotments,) MB Docket No. 08-243
FM Broadcast Stations.) RM-11490
(Charlotte Amalie, Virgin Islands))

NOTICE OF PROPOSED RULEMAKING

Adopted: January 14, 2009

Released: January 16, 2009

Comment Date: March 9, 2009

Reply Comment Date: March 24, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers a petition for rule making filed by Western New Life, Inc. ("Petitioner"), licensee of Station WJZG-FM, Channel 254A, Culebra, Puerto Rico, proposing the deletion of vacant Channel 271B at Charlotte Amalie, Virgin Islands. The proposed deletion of this vacant allotment accommodates the Station WJZG-FM hybrid contingent application, which requests the substitution of Channel 271A for Channel 254A at Culebra, and modification of the Station WJZG-FM license.¹

2. Channel 271B at Charlotte Amalie is a vacant allotment, resulting from the cancellation of the Station WSTA-FM license.² We find that the proposed Charlotte Amalie deletion is consistent with our rationale in *Grants and Church Rock, NM*³ because this vacant allotment has previously been subject to a filing window as a result of BC Docket No. 82-764. The reference coordinates for vacant Channel 271B at Charlotte Amalie are 18-20-36 NL and 64-55-48 WL. Interest parties should file comments expressing an interest in vacant Channel 271B at Charlotte Amalie to prevent its deletion.⁴ Interest parties are advised that if interest is expressed in vacant Channel 271B at Charlotte Amalie, the allotment will not be deleted from the FM Table since it is generally Commission policy not to delete an FM allotment where a *bona fide* expression of interest exists.

3. 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 community listed below, as follows:

¹ See File No. BMPH-20071211AAQ.

² See *OCC Acquisitions, Inc. Radio Station WSTA-FM, Charlotte Amalie, VI*, Memorandum Opinion and Order, 17 FCC Rcd 6147 (2002).

³ Cf. *Grants and Church Rock, New Mexico*, Report and Order, 22 FCC Rcd 9462 (MB 2007), *recon. pending* (denying a counterproposal to downgrade an existing vacant allotment that had not been subject to an auction window and announcing that "[i]n virtually all cases, we will not downgrade a 'drop-in' channel, especially if the vacant channel has not yet been subject to a window for the filing of applications for that channel").

⁴ See *Boswell, Oklahoma and Detroit, Texas*, Report and Order, 22 FCC Rcd 17632 (MB 2007) and *Coosada, Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 21117 (MB 2002) (stating that it is Commission policy to refrain from maintaining an allotment instances where there are no *bona fide* expressions of interest).

	<u>Channel</u>	
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Charlotte Amalie, Virginia Islands	257A, 271B ⁵	257A

4. 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.

5. Interested parties may file comments on or before March 9, 2009, and reply comments on or before March 24, 2009, 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 Petitioner, as follows:

Scott C. Cinnamon, Esq.
 Counsel for Western New Life, Inc.
 Law Offices of Scott C. Cinnamon, PLLC
 1250 Connecticut Ave., N.W.
 Suite 200, #144
 Washington, D.C. 20036

6. 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.**

7. 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

⁵ Channel 271B at Charlotte Amalie was inadvertently removed from the FM Table of Allotments. See *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).

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).

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).

8. 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

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.