

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-101
Table of Allotments,	)	RM-9885
FM Broadcast Stations.	)	
(Sparta and Buckhead, Georgia)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: May 24, 2000**

**Released: June 2, 2000**

Comment Date: July 24, 2000  
Reply Comment Date: August 8, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Barinowski Investment Company ("petitioner") requesting the substitution of Channel 274C3 for Channel 274A, its reallocation from Sparta to Buckhead, Georgia, as the community's first local aural service, and the modification of Station WPMA(FM)'s license accordingly. Petitioner states that it will promptly file an application for Channel 274C3, if allotted to Buckhead.

2. Petitioner states that the reallocation of Channel 274C3 to Buckhead and concomitant relicensing of Station WPMA(FM) would result in a preferential arrangement of allotments since it would provide the community with its first local aural service without depriving Sparta of its sole local aural service.<sup>1</sup> Petitioner notes that Buckhead was incorporated in 1887, with its first United States post office established in 1823 and its first church established in 1824. It states that at the present time Buckhead is considered to be Morgan County's point of access to living on Lake Oconee, a growing recreational area. In addition, petitioner states that Station WPMA(FM), as a Class C3 Buckhead facility, could serve a "considerably" larger area.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "among the several states and communities." The Commission has defined a community as a geographically identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, Pleasant Dale, Nebraska, 14 FCC Rcd 18893 (1999), Avon, North Carolina, 14 FCC Rcd 3939 (1999) and Thermal, California, 15 FCC Rcd 2100 (2000). We

<sup>1</sup> Petitioner states that Sparta will retain local aural service from noncommercial educational Station WJDS(FM).

recognize that Buckhead is incorporated and listed in the 1990 U.S. Census as a town, with a population of 176. However, we may find that a grouping of 176 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a local government, library, schools, shopping centers, churches, a newspaper and social or civic organizations. See, Searles Valley, California, 3 FCC Rcd 5221 (1988) and Naples, Florida, 41 RR 2d 1549 (1971). In addition, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See, Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Buckhead has a post office and two zip codes, 30625, which the U.S. Census states serves 1222 people, and 30650, which the U.S. Census attributes to Madison, GA, and serving 8855 people. However, we have been unable to determine that Buckhead has any other indicia of community status beyond four churches and two restaurants. Therefore, petitioner should provide information concerning any local governmental entities, community organizations, civic groups, etc., which exist and show that they have a nexus with Buckhead.

4. In addition, our review of petitioner's proposal finds that Sparta, with a 1990 U.S. population of 1,710 people, would be deprived of its sole local aural service if Station WPMA were reallocated to Buckhead. While petitioner states that the community would continue to receive local aural service from noncommercial educational Station WJDS, Commission records show that the station is not yet licensed and on the air. In Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990), the Commission stated that either a vacant allotment or a construction permit was not a substitute for an operating station. However, the Commission went on to state that under very limited circumstances, the removal of a community's sole local service could be justified if there are compelling public interest factors to offset the expectation of continued service. Therefore, petitioner should provide further information demonstrating how the public interest would be served by providing the smaller community of Buckhead with its first local aural service at the expense of Sparta losing its sole existing local aural service. Petitioner is also requested to provide information concerning the population and reception services within the loss and gain areas which will occur if Channel 274C3 is reallocated to Buckhead.

5. We believe petitioner's proposal warrants consideration since the substitution of Channel 274C3 for Channel 274A and its reallocation from Sparta to Buckhead could provide it with its first local aural service, if it is ultimately found to be a community for allotment purposes and to provide a public interest benefit sufficient to warrant the removal of Sparta's sole local aural service. Channel 274C3 can be allotted to Buckhead in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) southeast to avoid a short-spacing to Stations WGMG, Channel 271C3, Crawford, Georgia, and WVEE, Channel 277C, Atlanta, Georgia.<sup>2</sup> We have also determined that Channel 274C3, if allotted to Buckhead, would not provide 70 dBu service to any Urbanized Areas.

---

<sup>2</sup> The coordinates for Channel 274C3 at Buckhead are 33-31-40 North Latitude and 83-18-45 West Longitude.

6. 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 community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Buckhead, Georgia	--	274C3
Sparta, Georgia	274A	--

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.

8. Interested parties may file comments on or before July 24, 2000, and reply comments on or before August 8, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jeffrey Southmayd  
Southmayd & Miller  
1220 19th Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act 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), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass 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  
Chief, Allocations Branch  
Policy and Rules Division  
Mass 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 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 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 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, at its headquarters, 445 12th Street, S.W., Washington, D.C.