

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-64
Table of Allotments,) RM-9117
FM Broadcast Stations.)
(Tullahoma, Tennessee and Madison,)
Alabama))

NOTICE OF PROPOSED RULE MAKING

Adopted: March 29, 2000;

Released: April 7, 2000

Comment Date: May 30, 2000

Reply Comment Date: June 14, 2000

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making filed by Tennessee Valley Radio, Inc. ("petitioner"), licensee of Station WPZM(FM), Channel 227C1, Tullahoma, Tennessee, proposing the reallocation of Channel 227C1 from Tullahoma, Tennessee to Madison, Alabama, and the modification of Station WPZM(FM)'s license accordingly.¹ Petitioner states its intention to apply for the channel, if reallocated to Madison, Alabama.

2. The proposal is 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 competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Madison is an incorporated city with its own full-time mayor and a five-member city council. Madison has its own police and fire departments and its own water and

¹ We note that this petition for rulemaking was initially returned by letter on February 25, 1998. On March 27, 1998, petitioner filed a petition for reconsideration. In light of the recent precedent set in Killeen and Cedar Park, Texas, we are reinstating the petition for rule making, and dismissing the petition for reconsideration herein as moot. See 15 FCC Rcd ____ (released February 2, 2000); 65 FR 7748, February 16, 2000.

sewage services. Madison has two weekly newspapers, its own school system (three elementary schools, two middle schools, and one high school), and a number of commercial establishments.

3. Moreover, petitioner states that the reallocation of Channel 227C1 to Madison and would not deprive Tullahoma of its only local transmission service, and that Tullahoma has a plethora of radio services. Petitioner does not propose any change in its transmitter site. Petitioner advises that although Tullahoma is outside the Huntsville, Alabama Urbanized Area, Station WPZM(FM) presently provides a 70 dBu signal over the entire Urbanized Area and will continue to do so from its new community of license. Petitioner contends that by using actual terrain profiles, the predicted 70 dBu contour would extend approximately 2.5 kilometers (1.5 miles) farther than the required 50 kilometers (31.1 miles) and provides city grade coverage which is consistent with the policies set forth in Woodstock and Broadway, Virginia, 3 FCC Rcd 6398 (1988). Petitioner asserts that since it does not seek to relocate its transmitter site, this proposal meets the Woodstock requirements, and the reallocation of Channel 227C1 to Madison would result in no gain or loss areas.

4. Station WPZM(FM) at Tullahoma was originally a fully-spaced allotment. Thereafter, Station WGMZ(FM), Channel 226A, Glencoe, Alabama, was permitted to operate at a site pursuant to Section 73.215 of the Rules, that would otherwise be short-spaced to Station WPZM(FM) under Section 73.207 of the Rules. As such, the reallocated Channel 227C1 allotment at Madison would be 4 kilometers (2.5 miles) short-spaced to Station WGMZ(FM) in contravention of the separation requirements set forth in Section 73.207 of the Commission's Rules. Since Station WPZM(FM) is not changing its transmitter site, petitioner argues the reallocation will not create any new short-spacings, exacerbate existing short-spacings, or increase the potential for interference among existing short-spaced stations, citing, Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992).

5. In Killeen and Cedar Park, Texas, *supra*, we permitted a station, now restricted by Section 73.215 of the Commission's Rules, where no technical change is proposed by the station and where no new short-spacing would be created and no existing short-spacing exacerbated, to request reallocation of its channel. In doing so, we determined that the station should be afforded the same opportunity to reallocate its channel and change its community of license as the pre-1964 and pre-1989 short-spaced stations. To do otherwise, would result in preventing a station from changing its community of license where it did not create the short-spacing, even though the change results in a preferential arrangement of allotments.

6. We believe that soliciting comments on the proposal warrants consideration, since it could provide a first local FM transmission service to Madison, Alabama, without depriving Tullahoma of its sole local service.² Each community has five or more reception services and is considered to be well-served. Since petitioner does not seek to relocate its transmitter site, a gain and loss area study is

² Station WJIG(AM) a daytime-only service would remain licensed to the community.

not required. We note, however, that Station WPZM(FM) is located outside the Huntsville Alabama Urbanized Area and presently provides a 70 dBu signal to approximately 90.5% of the Urbanized Area, and by using the actual 3 to 16 kilometer terrain averages, the reallocation to Madison would provide a 70 dBu signal over approximately 99.2% of that Urbanized Area. Although Madison is located within the Huntsville, Alabama Urbanized Area, a Tuck analysis is not necessary because petitioner does not seek a first local service preference.³ Rather, the reallocation would result in a second local transmission service for Madison, which triggers priority four--other public interest matters. Tentatively, we are unable to determine if the proposal would result in a preferential arrangement of allotments consistent with the FM allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).⁴ Therefore, petitioner should demonstrate the overall public interest benefits that would be derived by the reallocation of Channel 227C1 from the larger community of Tullahoma, Tennessee (population 16,761) to Madison, Alabama (population 14,904).⁵ Moreover, since each community has a local daytime-only AM service, the allotment could provide either community with its first local FM transmission service.

Technical Summary

7. An engineering analysis has determined that Channel 227C1 can be reallocated to Madison in compliance with the Commission's minimum distance separation requirements with a site restriction of 50.6 kilometers (31.4 miles) northeast at petitioner's presently licensed site.⁶ Petitioner has submitted evidence that, using our standard prediction method, but relaxing the normal assumption of uniform terrain, its proposed facilities comply with our principal city coverage requirement. A staff analysis confirms that from the petitioner's presently authorized site, Station WPZM(FM) will provide city grade coverage to the community of Madison. Although the assumption of uniform terrain at the allotment stage is generally appropriate, we believe it would elevate form over substance to apply here, where as stipulated in Woodstock, petitioner has taken the affirmative steps necessary to allow us to evaluate a specific site, and our Rules ensure that petitioner will be the only applicant for the allotment. See Woodstock, supra. As requested, we shall propose

³ See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁴ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁵ All population figures are taken from the 1990 U.S. Census.

⁶ The coordinates for Channel 227C1 at Madison are 35-02-04 and North Latitude and 86-22-52 West Longitude.

to modify Station WPZM(FM)'s license to specify Madison, Alabama, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 227C1 at Madison, Alabama.

8. 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:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Tullahoma, Tennessee	227C1	----
Madison, Alabama	----	227C1

9. IT IS ORDERED, That the Secretary Shall Send, by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to petitioner, as follows:

Tennessee Valley Radio, Inc.
405 North Jackson Street
Tullahoma, Tennessee 37388

10. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Tennessee Valley Radio, Inc., IS DISMISSED, as moot.

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. Interested parties may file comments on or before May 30, 2000, and reply comments on or before June 14, 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 petitioners, or their counsel or consultants, as follows:

Jocelyn R. Roy
Gardner, Carton & Douglas
1391 K Street, N.W.

Suite 900, East Tower
Washington, D.C. 20005
(Counsel for Petitioner)

13. 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.

14. For further information concerning this proceeding, contact Sharon P. McDonald, 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 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 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 Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.