

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 01-110
Table of Allotments,) RM-9927
FM Broadcast Stations.)
(Newberry and Simpsonville, South Carolina))
)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 2, 2001

Released: May 11, 2001

Comment Date: July 2, 2001

Reply Comment Date: July 17, 2001

By the Chief, Allocations Branch:

1. The The Allocations Branch has before it a petition for rule making filed by Upstate Carolina Broadcasting Company, LLC (“petitioner”), permittee of Station WGVC(FM), Channel 292C3,¹ Newberry, South Carolina, proposing the downgrade of Channel 292C3 to Channel 292A at Newberry, and the reallocation of Channel 292A from Newberry to Simpsonville, South Carolina. Petitioner also requests that Station WGVC(FM)’s construction permit be modified to specify Simpsonville, South Carolina, as its new community of license. Petitioner states its intention to apply for the channel, if reallocated to Simpsonville.

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 Simpsonville is an incorporated community and has a 1990 U.S. Census population of 11,708 persons.² It has its own city government (mayor and five city council members), school system, fire department, zip code,

¹ On October 4, 1999, petitioner filed a one-step upgrade application (File No. BPH-19991004ABS) requesting the substitution of Channel 292C3 for Channel 292A at Newberry, South Carolina, which was granted on April 18, 2001.

² The 2000 U.S. Census population for Simpsonville is 14,352 persons.

and a large number of commercial businesses. Moreover, petitioner asserts that 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).³ Since petitioner does seek to change its Class A authorization site, a gain and loss area study is required. Moreover, because the proposed reallocation site covers only 39.4% of the Greenville, South Carolina Urbanized Area a Tuck analysis is not necessary.⁴ However, petitioner is requested to provide the overall public interests benefits that would be derived from the reallocation.

3. We believe that this proposal warrants consideration since the reallocation would provide a first local aural transmission service to Simpsonville, South Carolina, without depriving Newberry of its sole local service⁵. Channel 292A can be reallocated to Simpsonville in compliance with the Commission’s minimum distance separation requirements at city reference coordinates.⁶ 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 292A at Simpsonville, South Carolina.

4. 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> |
| Newberry, South Carolina | 292A ⁷ | --- |
| Simpsonville, South Carolina | --- | 292A |

³ 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).]

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); 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).

⁵ Stations WKDK(AM) and WKMG(AM) would remain licensed to the community.

⁶ The coordinates for Channel 292A at Simpsonville are 34-44-13 North Latitude and 82-15-16 West Longitude.

⁷ Although petitioner has been granted a construction permit for Channel 292C3 at Newberry, South Carolina, the FM Table of Allotments has not been amended to reflect the upgrade.

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

Upstate-Carolina Broadcasting Company, LLC
P. O. Drawer E
Toccoa, Georgia 30577
(Petitioner)

6. 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.

7. Interested parties may file comments on or before July 2, 2001, and reply comments on or before July 17, 2001, 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:

Robert Lewis Thompson, Esq.
Thiemann, Aitken et al., L.C.
908 King Street, Suite 300
Alexandria, Virginia 22314
(Counsel for Petitioner)

8. 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.

9. 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 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 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.