

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-143
Table of Allotments,) RM-9931
FM Broadcast Stations.)
(Ludington, Michigan))

NOTICE OF PROPOSED RULE MAKING

Adopted: August 2, 2000

Released: August 11, 2000

Comment Date: October 2, 2000
Reply Comment Date: October 17, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Garry Zack ("petitioner") requesting the allotment of Channel 242A to Ludington, Michigan, as the community's third local aural and second local commercial FM service. Petitioner states that he will apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration since the allotment of Channel 242A could provide the community with an additional local FM service. Channel 242A can be allotted to Ludington in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to avoid a short-spacing to Station WLXT, Channel 242C1, Petoskey, Michigan.¹ Canadian concurrence in the allotment of Channel 242A at Ludington must be obtained since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. 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:

¹ The coordinates for Channel 242A at Ludington are 43-54-30 North Latitude and 86-26-10 West Longitude. Petitioner proposed the allotment at coordinates 43-54-15 NL; 86-26-28 WL. However, the Commission generally does not protect a prospective applicant's desired transmitter site where the allotment will be available for application by multiple parties since we do not require the type of detailed technical antenna site showing required of an applicant and there is no guarantee that the petitioner will ultimately become the licensee. See, Stuart and Boone, Iowa, 5 FCC Rcd 4537 (1990), recon. denied, 6 FCC Rcd 6036 (1991).

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Ludington, Michigan	292A	242A, 254A ²

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 by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 2, 2000, and reply comments on or before October 17, 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:

Robert L. Olender
 Koerner & Olender, P.C.
 5809 Nicholson Lane, Suite 124
 North Bethesda, MD 20852
 (Counsel to petitioner)

6. 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.

7. 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

² D & B Broadcasting, LLC, licensee of Station WSRQ(FM), Channel 261A, Bear Lake, Michigan, and Fort Bend Broadcasting Company, Station WSRQ(FM)'s proposed assignee, have jointly filed a counterproposal in MM Docket 00-69, 15 FCC Rcd 10292 (2000), requesting the substitution of Channel 254A for Channel 292A at Ludington, and the modification of Station WKLA's license accordingly to accommodate the substitution of Channel 260C1 for Channel 261A, the reallocation of the channel from Bear Lake to Bellaire, Michigan, and the modification of Station WSRQ(FM)'s license accordingly. The counterproposal also proposes the allotment of Channel 291A to Bear Lake and Channel 259A to Rapid River, Michigan, as well as channel substitutions at Rogers City and Manistique, Michigan.

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.