

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-316
Table of Allotments,)	RM-11047
FM Broadcast Stations.)	
(Sparta and Morrison, Tennessee))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 10, 2004

Released: August 12, 2004

Comment Date: October 4, 2004

Reply Date: October 19, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Clear Channel Broadcasting Licenses, Inc. ("Petitioner"), licensee of FM Station WRKK, Channel 288A, Sparta, Tennessee. Pursuant to Sections 1.420(g) and (i) of the Commission's rules, Petitioner proposes to change the community of license for WRKK-FM from Sparta to Morrison, Tennessee, and to change the corresponding channel allotment from Channel 288A to Channel 287A.¹ Petitioner represents that if its request is granted, it will file an application to modify the facilities of WRKK-FM to specify operation on Channel 287A and to change its community of license to Morrison, Tennessee.

2. Petitioner proposes to change the community of license for Station WRKK-FM from Sparta to Morrison under the guidelines set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*.² That decision establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

3. In its Petition for Rule Making, Petitioner states that the proposed use of Channel 287A at Morrison is mutually exclusive with the current use of Channel 288A at Sparta. Petitioner notes that Sparta, the current community of license for WRKK-FM, would not be deprived of its only local service because it would continue to be served by two local stations, WSMT(AM) and WTZX(AM), which would remain licensed to Sparta. Finally, Petitioner states that allotment of Channel 287A at Morrison would afford that

¹ 47 C.F.R. §§ 1.420(g) and (i).

² 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

community a first local service (FM allotment priority 3) and would result in a significant net gain in population service coverage.

4. Morrison, Tennessee is an incorporated town with a population of 684, according to the 2000 U.S. Census Data. Petitioner states that Morrison, established in the early 1900s, has its own ZIP code (37357), post office, library, and several major businesses. Morrison is governed by a mayor and five aldermen. Morrison contracts for its own water, electric, and sewer services, and is served by its own local volunteer fire department. Although Morrison does not have its own police department, it is served by the Warren County police force, as opposed to relying on a nearby town or city for police service

5. Morrison residents support several churches, and the community also has a bank, a credit union, and an accounting service. Morrison has its own elementary school, two community centers, a youth home, and a specialized housing facility for the mentally ill. The Carrier Corporation, a major manufacturer of heating, ventilation, and air conditioning products, has a manufacturing plant in Morrison employing approximately 1,300 persons. The Bridgestone-Firestone Companies also have a manufacturing plant in Morrison with more than 2,000 employees. In addition, numerous other businesses are located in Morrison, including several that incorporate the word “Morrison” in their business names.

6. Neither the existing 70 dBu signal for WRKK-FM, operating on Channel 288A at Sparta, nor the proposed 70 dBu signal for a Channel 287A facility at Morrison, covers any part of any urbanized area. Under the circumstances described in the petition, no *Tuck* analysis will be necessary to evaluate this change of community proposal.⁴

7. The proposal to allot Channel 287A at Morrison warrants consideration because it would provide a first local broadcast transmission service to Morrison, thus constituting a preferential arrangement of allotments when compared with the current allotment of Channel 288A at Sparta.⁵ Petitioner further states that the proposed change of community would result in a net gain of 30,731 persons. Both Sparta and Morrison are well-served with five or more aural transmission services.

8. The proposed allotment could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Morrison and Sparta, Tennessee:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Morrison, Tennessee	---	287A
Sparta, Tennessee	288A	---

Proposed Coordinates for Channel 287A at Morrison, Tennessee: 35-37-27 NL and 85-53-37

⁴ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995).

⁵ Retention of Channel 288A at Sparta does not satisfy any of the first three allotment priorities.

WL, at a site 3.4 km (2.1 miles) northeast of Morrison.

9. 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.

10. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before October 4, 2004, and reply comments on or before October 19, 2004, 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, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the petitioner, as follows:

Gregory L. Masters
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11. Parties who choose to file by paper 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. An 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, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. 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 [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "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).

13. For further information concerning this proceeding, contact Deborah A. Dupont. Media

⁶ *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b)*, 46 Fed.Reg. 11549 (February 9, 1981).

Bureau, at (202)418-7072. 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 the 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

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) Petitions for rule making which conflict with the proposals in this *Notice* 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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, 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, at its headquarters, 445 12th Street, S.W., Washington, D.C.