

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-18
Table of Allotments,)	RM-9790
FM Broadcast Stations.)	
(Barnwell, South Carolina, and Pembroke,)	
Douglas and Willacoochee, Georgia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 27, 2000

Released: February 1, 2000

Comment Date: March 23, 2000

Reply Comment Date: April 7, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Bullie Broadcasting Corporation ("petitioner"), licensee of Station WBAW-FM, Channel 256C3, Barnwell, South Carolina, requesting the substitution of Channel 257C1 for Channel 256C3 at Barnwell, South Carolina, the reallocation of Channel 257C1 to Pembroke, Georgia, as the community's first local aural service, and the modification of Station WBAW-FM's license to specify Pembroke as its community of license. To accommodate the allotment at Pembroke, petitioner also proposes to reallocate Channel 258C1 from Douglas, Georgia, to Willacoochee, Georgia, as the community's first local aural service, and modify the license of Station WDMG-FM to specify Willacoochee as its community of license.¹ Finally, petitioner proposes that Channel 256C3 be allotted to Barnwell, as a "back-fill" allotment, at new coordinates. Petitioner states that it will apply for Channel 257C1, if allotted to Pembroke, and Channel 256C3, if allotted to Barnwell.

2. Petitioner filed its request 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.² In support of its proposal, petitioner states that the proposed changes will provide a first local service to two communities (Pembroke and Willacoochee) without depriving either Barnwell or Douglas of

¹ The licensee of Station WDMG-FM, Jumbo Thing, Inc. ("Jumbo Thing"), has consented to the change of its station's community of license and change of transmitter site. Therefore, an Order to Show Cause is not necessary.

² See 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).

their sole local aural service. Barnwell will continue to receive local service from AM Station WBUB (formerly WMXG) and Douglas will continue to receive local service from AM Stations WDMG and WOKA as well as FM Station WOKA-FM. In addition, if the proposal is granted, petitioner states that Barnwell will receive a second local aural service from the newly allotted Channel 256C3. Thus, petitioner asserts that the reallocations proposed would further the Commission's allotment priorities.³

3. Petitioner states that Pembroke, the seat of Bryan County, is an incorporated community with a 1990 U.S. Census population of 1,503 persons and an estimated 1997 population of 1,638 persons. It has its own local government, headed by a mayor and five-member city-council, as well as its own police and volunteer fire departments. According to the petitioner, the city provides its residents with parks, water and sewage services and trash hauling. Pembroke also has an elementary, middle and high school, administered by the County, as well as an independent K-12 school. Additionally, Pembroke is home to a number of churches, such as the First Baptist Church of Pembroke and Pembroke United Methodist, as well as civic organizations, including the Lions Club, American Legion and Masonic Lodge. Petitioner points out that Pembroke has its own local businesses, including Pembroke Pharmacy, Western Auto, Shuman Owens Supply Company and the First Bank of Coastal Georgia, with the largest employer being Bryan County and the Bryan County Public Schools. In addition, petitioner states that the Bryan County Times, one of two weekly newspapers in Bryan County, is published in Pembroke.

4. Willacoochee, according to the petitioner, is an incorporated community with a population of 1,205 persons, and is governed by a mayor and five-member town council. Willacoochee also has its own police and volunteer fire departments and public library, and the city provides its residents with water and sewer service. Petitioner notes that among the larger retail establishments in Willacoochee are Corbitt's Hardware, Mickey's Food Store, and Dollar General, and the manufacturing base includes a number of businesses, including, among others, Fleetwood Mobile Homes, Willacoochee Industrial Fabrics and Pak Limited Plastics. In addition, Willacoochee has a number of churches and civic clubs.

5. Petitioner states that the proposal does not raise any concern about the migration of stations from rural to urban areas. Pembroke is not located within the Savannah or any other Urbanized Area and the 70 dBu contour of Station WBAW-FM at Pembroke will cover only ten (10%) of the Savannah Urbanized Area. As to the allotment of Channel 258C1 at Willacoochee, petitioner states that Willacoochee is not located within any Urbanized Area and Station WDMG-FM's 70 dBu contour will not encompass any portion of any Urbanized Area. Therefore, it contends that a first local service preference is justified for both communities. Finally, petitioner states that the allotment of Channel 257C1 to Pembroke will enable Station WBAW-FM to provide service to an additional 401,933 people within an 11,733 square kilometer area and enable Station WDMG-

³ The FM allotment priorities are: (1) first aural service; (2) second aural service; (3) first local aural service; (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

FM to provide service to an additional 278,586 people within an 11,936 square kilometer area. While the change of community from Barnwell to Pembroke will result in a loss of service to 60,258 people, petitioner states that the change will not result in the creation of any underserved area as the entire loss population will continue to receive at least five aural services. Likewise, the reallocation of Station WDMG-FM from Douglas to Willacoochee will result in a loss of service to 14,033 people within a 1,783 square kilometer area but the entire loss area will continue to receive service from at least five aural services, according to the petitioner. With the allotment of Channel 256C3 to Barnwell as a "back-fill" channel, petitioner states that 15,030 persons who now receive service from the existing Station WBAW-FM will not receive service from the new Channel 256C3 station. However, the new station would provide service to a total of 81,477 persons, of whom 36,249 do not receive service from the existing Station WBAW-FM and would not receive service from Station WBAW-FM as a Pembroke station. Thus, petitioner submits that adoption of its proposal would result in a total net gain in service by 716,828 people.

Technical Summary

6. Channel 257C1 can be allotted to Pembroke in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11.1 miles) south to avoid a short-spacing to Station WYKZ, Channel 254C1, Beaufort, SC, and Station WQIK-FM, Channel 256C, Jacksonville, FL, and to accommodate petitioner's desired transmitter site. Channel 258C1 can be allotted to Willacoochee with a site restriction of 34.5 kilometers (21.4 miles) west to avoid a short-spacing to proposed Channel 257C1 at Pembroke and accommodate petitioner's desired site. Channel 256C3 can be reallocated to Barnwell with a site restriction of 19.6 kilometers (12.2 miles) north to avoid a short-spacing to Channel 257C1 at Pembroke.⁴ Further, the staff engineering study confirms that the 70 dBu contour for Channel 257C1 at Pembroke, as proposed, will not encompass 50% or more of the Savannah Urbanized Area and that the 70 dBu contour for Channel 258C1 at Willacoochee will not encompass 50% or more of the Albany, Georgia, Urbanized Area. However, the staff study shows that the reallocation of Channel 257C1 to Pembroke and the "back-fill" of Channel 256C3 at Barnwell, will create underserved areas where 508 people within a 116.5 square mile area will receive only three fulltime aural services and 2,004 people within a 328 square kilometer area will receive only four such services.⁵ We recognize that the allotment of Channel 257C1 to Pembroke will enable 27 people within a 7 square kilometer area to receive a fourth and 6,497 people within a 251 square kilometer area to receive a fifth fulltime aural service. Petitioner is requested to provide a showing of the loss area and population which would occur if Channel 257C1 is allotted to Pembroke without taking into account the allotment of Channel 256C3 to Barnwell. As the Commission has stated in Change of Community MO&O,

⁴ The coordinates for Channel 257C1 at Pembroke are 32-11-13 North Latitude and 81-48-04 West Longitude. The coordinates for Channel 258C1 at Willacoochee are 31-20-27 North Latitude and 83-24-30 West Longitude. The coordinates for Channel 256C3 at Barnwell are 33-24-29 North Latitude and 81-16-43 West Longitude.

⁵ While the petitioner claims that the entire loss area will remain well-served with five or more services, we find that it used the coverage of two daytime-only AM stations, WBUB and WDOG, to arrive at this conclusion. Further, petitioner also used the .5 mV/m contour rather than the required 2 mV/m contour.

supra, the public has a legitimate expectation of continued service by a station they have come to rely upon and the replacement of an operating station with a vacant allotment is not a suitable substitute. Petitioner is also requested to provide a showing of the population and area which would lose service if Station WDMG-FM is reallocated to Willacoochee. While the petitioner states that 14,033 people would lose service if Channel 258C1 is removed from Douglas, we find that this figure is arrived at by using Station WDMG-FM's authorized facilities instead of the required maximum facilities for a Class C1 station. Rather, the staff engineering study finds that the reallocation of Channel 258C1 to Willacoochee would result in a loss of service by 110,163 people within an 8,276 square kilometer area.

7. We believe petitioner's proposal warrants further consideration since the substitution of Channel 257C1 for Channel 256C3 at Barnwell and the reallocation of Channel 257C1 to Pembroke could provide the community with its first local aural service and enable Station WBAW-FM to provide service to a greater number of people and the reallocation of Channel 258C1 from Douglas to Willacoochee could provide that community with its first local aural service. In accordance with Section 1.420(i), we will not accept competing expressions of interest in the use of Channel 257C1 at Pembroke or Channel 258C1 at Willacoochee since the proposed allotments are mutually exclusive with their present use at Barnwell and Douglas, respectively.

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>
Douglas, Georgia	258C1, 294C1	294C1
Pembroke, Georgia	--	257C1
Willacoochee, Georgia	--	258C1
Barnwell, South Carolina	256C3	256C3

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

10. Interested parties may file comments on or before March 23, 2000, and reply comments on or before April 7, 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:

J. Geoffrey Bently, P.C.

P.O. Box 807
Herndon, VA 20172-0807
(Counsel to petitioner)

11. 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.

12. 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.