

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-171
Table of Allotments,)	RM-9926
FM Broadcast Stations.)	
(Woodville and Wells, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 2000

Released: September 22, 2000

Comment Date: November 13, 2000

Reply Date: November 28, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by Radio Woodville, Inc. ("Radio Woodville"), licensee of Station KVLL, Channel 234C2, Wells, Texas, proposing the reallocation of Channel 234C2 from Woodville, Texas, to Wells, Texas, and modification of its license to specify operation at Wells. Radio Woodville indicated that it would file an application for Channel 234C2 at Wells, if the channel is allotted to the community.

2. Radio Woodville 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. 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). In support of its proposal, Radio Woodville states that Channel 234C2 at Wells is mutually exclusive with the current use of Channel 234C2 at Woodville and can be allotted to Wells consistent with Section 73.207 of the Commission's Rules. Radio Woodville states that its proposal is preferred under the Commission's priorities because Wells would receive a first local service while Woodville would retain local service from Station KVLL(AM). According to Radio Woodville, Wells is located in Cherokee County with a 1990 U.S. Census population of 761 people. Further, Wells has its own police and fire departments, churches and a medical clinic along with its own public library. The Wells Independent School district consists of a middle school and a high school and the community has its own post office and zip code (95976). According to Radio Woodville, Station KVLL at Wells will provide service to 124,334 people, resulting in a net gain in population of 15,994 people. Radio Woodville contends that the loss area is served in whole or part by some 32 or more AM and FM stations and that there are at least five or more services available in

every location where KVLL-FM service will be lost, with no white or gray areas created. Additionally, Radio Woodville provided an engineering exhibit indicating that the interference free (0.5 mV/M) contours of 15 AM and FM stations in Louisiana and Texas completely encompass the loss area.¹

3. We believe Radio Woodville's proposal warrants consideration since the reallocation of Channel 234C2 from Woodville, Texas, to Wells, Texas, could provide the community of Wells with its first local service under our allotment priorities.² In addition, the proposed reallocation and change of community of license to Wells would not result in a loss of sole local service to Woodville since Station KVLL(AM) will remain licensed to the community. A staff engineering analysis has determined that Channel 234C2 can be allotted to Wells, Texas, in compliance with the Commission's minimum distance separation requirements at Radio Woodville's specified site.³ Our analysis also shows that from its new location, Station KVLL will no longer provide service to Woodville. Station KVLL at Woodville provides service to 105,752 people over 8,560 square kilometers. Our analysis further shows that Station KVLL at Wells will provide coverage to 127,071 people with 62,788 people gaining service while 40,752 people will lose service. Although Radio Woodville states that the loss area will be served by more than five aural services, our engineering review disagrees with this statement. Our analysis shows that with the reallocation of Channel 234C2 to Wells, Woodville will lose a third, fourth and fifth service. Radio Woodville uses the 0.5 mV/m contour to define the boundaries of the reception areas of the AM stations it lists. In doing so, it presupposes that they all are AM Class A clear channel stations. This is not correct. Our records reveal that few of these stations are clear channel, in which case their primary service or fulltime reception areas would be circumscribed by the 0.5 mV/m groundwave contour. The reception or service area is defined by the interference-free nighttime skywave contour, as determined by the contributions of other non-clear channel stations.⁴ Therefore, Radio Woodville is requested to provide additional information to reflect

¹ Service No. 1: The interference free contour of KEEL-AM, Shreveport, LA completely encompasses the loss area. Service No. 2: The interference free contour of KLVI-AM, Beaumont, TX completely encompasses the loss area. Service No. 3: The interference free contours of KTXJ-AM, Jasper, TX and KJOJ-AM, Conroe, TX overlap in such a way as to completely encompass the loss area. Service No. 4: The interference free contours of KLBG-AM, Alexandria, LA, KSFA-AM, Nacogdoches, TX and KVLL-AM, Woodville, TX overlap in such a way as to completely encompass the loss area. Service No. 5: The interference free contour of KTRH-AM, Houston, TX overlaps the interference free (60 dBu) contours of KAFX-FM, Diboll, TX and KWYX-FM, Jasper, TX in such a way as to completely encompass the loss area. Service No. 6: The interference free contour of KDLA-AM, De Ridder, LA overlaps the interference free (60 dBu) contours of KYKS-FM, Lufkin, TX, KOVE-FM, Port Arthur, TX, KJAS-FM, Jasper, TX and the construction permit held by KKTL-FM (BPH-19970917) in such a way as to completely encompass the loss area.

² 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)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

³ The coordinates for Channel 234C2 at Wells are 31-12-37 and 94-57-15. The coordinates for Station KVLL at Woodville are 31-00-32 and 94-24-14.

⁴ Reception services are those aural services that can be received within a given geographical area, including

the areas and populations that will gain as well as those that will lose existing service using the proper full-time reception areas for each of the listed stations.⁵ 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 234C2 at Wells.

4. In view of the fact that the proposed allotment would provide a first local service to Wells, Texas, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 234C2 to Wells. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Woodville and Wells, as follows:

Community	Channel No.	
	Present	Proposed
Woodville, Texas	234C2	-----
Wells, Texas	-----	234C2

5. 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.

6. Interested parties may file comments on or before November 13, 2000, and reply comments on or before November 28, 2000, and are advised to read the Appendix for the proper procedures.

full-time AM, as well as FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class C facilities, whichever is greater, should be used in the study. The area of reception service for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class A station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by the change of community proposal, the petitioner should include in its study the reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served. See MM Docket No. 98-53, Malvern and Bryant, Arkansas, 13 FCC Rcd 8426 (1998).

⁵ In evaluating proposals pursuant to Section 1.420(i), the Commission has stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Modification, supra, at 5 FCC Rcd 7097.

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's counsel, as follows:

Mark N. Lipp
Scott C. Cinnamon
Shook, Hardy & Bacon
600 14th Street, NW, Suite 800
Washington, D. C. 20005

7. 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.

8. For further information concerning this proceeding contact Kathleen Scheuerle, 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 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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 Procedures. 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 proposal(s) 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.