

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-8
Table of Allotments,)	RM-9788
FM Broadcast Stations.)	
(Spencer and Webster, Massachusetts))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 5, 2000

Released: January 14, 2000

Comment Date: March 8, 2000

Reply Comment Date: March 23, 2000

By the Chief, Allocations Branch:

1. The Commission has before it a Petition for Rule Making filed by Montachusett Broadcasting, Inc. (“Montachusett Broadcasting”), licensee of Station WORC-FM, Channel 255A, Spencer, Massachusetts, proposing the reallocation of Channel 255A from Spencer to Webster, Massachusetts, and the modification of its Station WORC-FM license to specify Webster as the community of license. Montachusett Broadcasting filed its Petition for Rule Making pursuant to Section 1.420(i) of the Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression 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).

2. As a background to this matter, Montachusett Broadcasting refers to an earlier Report and Order in MM Docket No. 98-174, 14 FCC Rcd 2114 (1999), in which we reallocated Channel 255A from Webster to Spencer, Massachusetts, and modified the Station WORC-FM license to specify Spencer as the community of license. In its Petition for Rule Making, Montachusett Broadcasting documents its efforts to implement that reallocation. Notwithstanding these efforts, Montachusett Broadcasting now states that there is no transmitter site available that would enable Station WORC-FM to comply with Commission engineering requirements and local zoning requirements. For this reason, Montachusett Broadcasting requests that Channel be reallocated back to Webster and its license be modified to specify Webster as the community of license. Montachusett Broadcasting also notes that subsequent to the Report and Order in MM Docket No. 98-174, Station WORC-FM has continued to operate with its former facilities at Webster.

3. In light of the above, we propose to reallocate Channel 255A from Spencer to Webster, Massachusetts, and modify the license of Station WORC-FM to specify Webster as the community

of license.¹ This would enable Station WORC-FM to continue operation. Since the request is consistent with the provisions of Section 1.420(i) of the Rules, we shall propose the Station WORC-FM license without entertaining competing expressions of interest or requiring Montachusett Broadcasting to demonstrate the availability of an additional equivalent channel for use by such parties.

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 community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Webster, Massachusetts	-----	255A
Spencer, Massachusetts	255A	-----

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 March 8, 2000, and reply comments on or before March 23, 2000, 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 such comments should be served on the petitioners, or their counsel or consultant, as follows:

Erwin G. Krasnow
 c/o Verner, Liipert, Bernhard, McPherson and Hand
 901 15th Street, NW, Suite 700
 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

¹ The reference coordinates for the Channel 255A allotment at Webster, Massachusetts, are 42-02-10 and 71-59-23. Station WORC-FM may continue to operate pursuant to the separation requirements set forth in Section 73.213(c)(1) of the Rules with respect to Station WPLM-FM, Channel 256B, Plymouth, Massachusetts, and Station WPLR, Channel 256B, New Haven, Connecticut.

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), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Robert Hayne, 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 contained 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 (TV) Table of Allotments, Section 73.202(b) (73.606(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 (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.