

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

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ardmore, Brilliant, Gadsden, Moundville,
Pleasant Grove, Scottsboro, Trussville
Tuscaloosa and Winfield, Alabama, Columbus
and Okolona, Mississippi, McMinnville,
Pulaski and Walden, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 28, 2001

Released: March 2, 2001

Comment Date: April 24, 2001
Reply Comment Date: May 9, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Rule Making filed jointly by Capstar TX Limited Partnership ("Capstar"), licensee of Station WQEN, Channel 279C1, Gadsden, Alabama, Station WENN, Channel 290A, Trussville, Alabama, and Station WRTR, Channel 288A, Tuscaloosa, Alabama, and Jacor Licensee of Louisville II, Inc. ("Jacor"), licensee of WTRZ-FM, Channel 280A, McMinnville, Tennessee. The Petition for Rule Making sets forth eight interrelated proposals. We will discuss each of these proposals below.

2. Seven of these proposals request a change in community of license. These requests are filed 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 a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In evaluating a 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, 90 FCC 2d 88 (1988).1

Trussville and Pleasant Grove, Alabama

3. Capstar proposes the substitution of Channel 288C3 for Channel 290A at Trussville, reallocation of Channel 288C3 to Pleasant Grove, and modification of its Station WENN license to specify operation on Channel 288C3 at Pleasant Grove, Alabama.2 This will result in a first local service to Pleasant Grove and a net gain in service to 129,457 persons. The area and population that will lose service will continue to receive a minimum of five aural services. See Family Broadcasting Group, 53 RR2d 662 (1983).

1 The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

2 The reference coordinates for the proposed Channel 288C3 allotment at Pleasant Grove, Alabama, are 33-26-38 and 86-52-47.

4. We recognize that both Pleasant Grove and Trussville are located within the Birmingham Urbanized Area and that Station WENN will provide a 70 dBu signal to 52.4% of the Urbanized Area. We are concerned with the potential migration of stations from lesser served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making the determination regarding a proposal to award a first local service preference, we apply existing precedent. See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and most importantly, the independence of the suburban community.

5. In its Petition for Rule Making, Capstar first notes that since Trussville and Pleasant Grove are already within the Birmingham Urbanized Area, this proposal does not take on the same significance with respect to our concern for the migration of stations from rural to urban areas. Long Beach and East Los Angeles, California, 10 FCC Rcd 2864 (1995); Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (1996). Nevertheless, Capstar contends that Pleasant Grove is entitled to a preference as a first local service under Faye and Richard Tuck, *supra*. In support of this contention, Capstar notes that while the Pleasant Grove population of 8,458 persons is only 3.2% of Birmingham, such a percentage has not precluded favorable consideration as a first local service. See e.g. Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992). Capstar also notes that the proposed transmitter site is 32 kilometers from Birmingham and that the 70 dBu contour will cover only than 52.4% of the Urbanized Area. In any event, the Commission has stated that these factors have less significance than evidence of independence. See Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Consistent with the factors set forth in Faye and Richard Tuck, Capstar contends that Pleasant Grove is not dependent upon the Birmingham Urbanized Area for its existence. Pleasant Grove is an incorporated community with a population of 8,458 persons. It is governed by a Mayor and Town Council. Pleasant Grove has its own library, municipal court, office of public works, police and fire departments and a Industrial and Commercial Development Board. Capstar has identified businesses in Pleasant Grove which employ 760 persons. Pleasant Grove provides electrical power and natural gas to its residents through contracts with Alabama Power and Southern Natural Gas Corporation. Pleasant Grove students attend Jefferson County public schools and four private and parochial schools, all of which are located within Pleasant Grove. In addition to a local post office and ZIP code, Capstar notes that the weekly Western Star newspaper serves communities other than Birmingham and provides both a news and advertising outlet for Pleasant Grove.

6. In order to accommodate the Channel 283C3 allotment at Pleasant Grove, Capstar proposes the substitution of Channel 290A for Channel 288A at Tuscaloosa, Alabama, reallocation of Channel 290A to Moundville, Alabama, and modification of its Station WRTR license to specify operation on Channel 290A at Moundville.³ This will provide Moundville with a first local service. Moundville is an incorporated community with a population of 1,348 persons located outside of the Tuscaloosa Urbanized Area. Tuscaloosa will continue to receive local service from nine stations and the population losing service due to this reallocation will continue to receive a minimum of five services. Finally, Capstar notes that Station WRTR no longer provides the requisite 70 dBu signal to all of Tuscaloosa due to a recent annexations.

³ The proposed reference coordinates for the Channel 290A allotment at Moundville, Alabama, are 33-00-03 and 87-34-20.

Winfield and Brilliant, Alabama

7. In view of the proposed removal of Channel 290A from Trussville, Capstar and Jacor propose the reallocation of Channel 290A from Winfield, Alabama, to Brilliant, Alabama, and modification of the Station WKXM-FM license to specify Brilliant as the community of license.⁴ Station WKXM-FM is currently short-spaced to Station WGTX, Channel 290C, Memphis, Tennessee, Station WJEC, Channel 293A, Vernon, Alabama, and Station WENN, Channel 290A, Trussville, Alabama. At the new transmitter site, Station WKXM-FM will comply with the spacing requirements set forth in Section 73.207 of the Rules and serve 4,074 more persons. This will provide Brilliant with a first local service while AM Station WKXM will continue to provide local service to Winfield. Ad-Media Management Corporation, licensee of Station WKXM-FM, has consented to the proposed change in community of license and transmitter relocation. Capstar and Jacor have agreed to reimburse the licensee for the expenses incurred in changing its community of license and transmitter site.

Gadsden and Trussville, Alabama

8. Capstar proposes the reallocation of Channel 279C1 from Gadsden, Alabama, to Trussville, Alabama, and modification of its Station WQEN license to specify Trussville as the community of license.⁵ This would replace the sole local service at Trussville currently being provided by Station WENN. Notwithstanding the proposed reallocation of Station WENN to Pleasant Grove as discussed in paragraph 3, *supra*, Trussville would continue to have local service. In regard to the proposed reallocation from Gadsden to Trussville, Gadsden would continue to have local service from five stations.

9. In order to accommodate the reallocation of Channel 279C1 to Trussville, Capstar proposes the reallocation of Channel 280C2 from Columbus, Mississippi, to Okolona, Mississippi, and modification of the Station WACR license to specify Okolona as its community of license.⁶ T&W Communications, Inc., licensee of station WACR, has agreed to the proposed change in community of license and transmitter relocation, and Capstar has agreed to reimburse T&W Communications for its expenses in relocating the Station WACR transmitter site. *Circleville, Ohio*, 8 FCC 2d 159 (1967). This would be a first local service to Okolona (population 3,267 persons) while Columbus will continue to have six local services.

Pulaski, Tennessee, and Ardmore, Alabama

10. Capstar and Jacor propose the substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, reallocation of Channel 252C1 to Ardmore, Alabama, and modification of the Station WKSJ-FM

⁴ The proposed reference coordinates for the Channel 290A allotment at Brilliant, Alabama, are 34-01-25 and 87-46-17.

⁵ The proposed reference coordinates for the Channel 279C1 allotment at Trussville, Alabama, are 33-26-38 and 86-52-47.

⁶ The proposed reference coordinates for the Channel 280C2 allotment at Okolona, Mississippi, are 33-26-38 and 86-52-47.

license to specify operation on Channel 252C1 at Ardmore.⁷ This will also result in a gain in service to 696,884 persons without creating any loss area. Pulaski Broadcasting, Inc., licensee of Station WKSR-FM, has agreed to the upgrade and change of community of license. This reallocation will provide Ardmore with a first local service while AM Station WKSR will remain licensed to Pulaski.

11. Even though Ardmore is not located in any Urbanized Area, the proposed 70 dBU contour will encompass more than 50% of both the Decatur, Alabama, and Huntsville, Alabama Urbanized Areas. For this reason, Capstar and Jacor have provided a showing pursuant to Faye and Richard Tuck that Ardmore is entitled to consideration as a first local service. See Headland, Alabama, and Chattahoochee, Florida, *supra*.

12. Capstar and Jacor note that Ardmore with a population of 1,090 persons is located 37.6 kilometers from Huntsville and 44.6 kilometers from Decatur. Ardmore is governed by a Mayor and City Council. Ardmore has its own police and fire departments, Water Works and Sewer Board and its own Municipal Court. Ardmore maintains the Ardmore High School for 300 students between kindergarden and grade 12. Ardmore has its own ZIP Code and local newspaper, Your Community Shopper. Finally, Capstar and Jacor have identified numerous businesses and churches within the town limits.

13. In order to reallocate Channel 252C1 to Ardmore, Capstar and Jacor propose the substitution of Channel 278A for Channel 252A at Scottsboro, Alabama, and modification of the Station WKEA license to specify operation on Channel 278A.⁸ KEA Radio, Inc., licensee of Station WKEA, has agreed to the proposed change in channel and Capstar and Jacor have agreed to reimburse KEA Radio, Inc. for the expenses in changing its channel. The Channel 278A allotment at Scottsboro requires the reallocation of Channel 279C1 from Gadsden to Trussville as discussed above.

McMinnville and Walden, Tennessee

14. Jacor proposes the substitution of Channel 279C3 for Channel 280A at McMinnville, Tennessee, reallocation of Channel 279C3 to Walden, Tennessee, and modification of its Station WTRZ license to specify operation on Channel 279C3 at Walden.⁹ Again, the reallocation of Channel 279C3 to Walden requires the reallocation of Channel 279C1 from Gadsden. This proposal will provide a first local service to Walden, with a population of 1,523 persons, and result in a gain in service to 354,270 persons. McMinnville would continue to receive local service from four stations. Walden is not located in an Urbanized area and the proposed facility will not provide a 70 dBU signal to more than 50% of any Urbanized Area.

15. In view of the fact that this proposal will result in six communities receiving first local service, four stations receiving upgraded channels, and more than 1,197,000 persons receiving additional services, we believe that it would serve the public interest to solicit comments on this proposal. Therefore, we seek comments on the proposed amendments to the FM table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

⁷ The proposed reference coordinates for the Channel 252C1 allotment at Ardmore, Alabama, are 34-56-27 and 86-48-15.

⁸ The proposed reference coordinates for the Channel 278A allotment at Scottsboro, Alabama, are 34-35-22 and 85-59-31.

⁹ The proposed reference coordinates for the Channel 279C3 allotment at Walden, Tennessee, are 35-14-32 and 85-22-17.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Ardmore, Alabama	-----	252C1
Brilliant, Alabama	-----	290A
Gadsden, Alabama	279C1	-----
Moundville, Alabama	-----	290A
Pleasant Grove, Alabama	-----	288C3
Scottsboro, Alabama	252A	278A
Trussville, Alabama	290A	279C1
Tuscaloosa, Alabama	288A	-----
Winfield, Alabama	290A	-----
Columbus, Mississippi	280C2	-----
Okolona, Mississippi	-----	280C2
Walden, Tennessee	-----	279C3
McMinnville, Tennessee	280A	-----
Pulaski, Tennessee	252A	-----

16. 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.

17. Interested parties may file comments on or before April 24, 2001, and reply comments on or before May 9, 2001, 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:

Mark N. Lipp	Gregory L. Masters
Shook, Hardy & Bacon	Wiley, Rein & Fielding
600 14 th Street, NW	1776 K Street, NW
Suite 800	Washington, D.C. 20006
Washington, D.C. 20005	

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

19. 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.