

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-6
Table of Allotments,)	RM-10009
FM Broadcast Stations.)	
(Steubenville, Ohio and)	
Burgettstown, Pennsylvania))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 3, 2001

Released: January 12, 2001

Comment Date: March 5, 2001

Reply Date: March 20, 2001

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of Keymarket Licenses, LLC ("Keymarket"), proposing the reallocation of Channel 278B from Steubenville, Ohio, to Burgettstown, Pennsylvania. Keymarket also requests modification of its license for Station WOGH(FM), Steubenville, to be modified to specify operation at Burgettstown. Keymarket indicated that it would file an application for Channel 278B at Burgettstown if the channel is allotted to the community.

2. Keymarket 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, Keymarket states that the requested reallocation of Channel 278B to Burgettstown is mutually exclusive with the current allotment of Channel 278B at Steubenville and that the channel should be reallocated without the acceptance of competing expressions of interest. Keymarket states that its proposal is in the public interest as Burgettstown will be provided with its first local service while Steubenville will retain existing service from two commercial AM stations and one non-commercial FM station. Further, there is no issue of service loss or gain created by this proposal as relocation is not a factor since the proposed reference

coordinates are identical to the present WOGH(FM) licensed transmitter site coordinates. In further support of its request, Keymarket points out that Burgettstown is located in Washington county approximately 20 miles east of Pittsburgh and has a 1990 U.S. Census Population of 1,634 people. According to Keymarket, Burgettstown was incorporated in 1881, is governed by a mayor and five member city council and provides police, fire and sewage services to the community. Burgettstown has its own public library, public school system and a Catholic high school, commercial establishments, gas stations and two local post offices. There are five separate churches in Burgettstown as well as the Lions Club and the American Legion. Keymarket states that major employers in the community include Langeroth Metallurgical Company and Union Electric. Keymarket believes that Burgettstown has the social, economic and governmental indices to qualify as a community for allotment purposes.

3. We believe Keymarket's proposal warrants consideration since the reallocation of Channel 278B from Steubenville, Ohio, to Burgettstown, Pennsylvania, could provide the community of Burgettstown with its first local aural transmission service under our allotment priorities.¹ Retention of Channel 278B in Steubenville triggers Priority No. 4 while reallocation of Channel 278B to Burgettstown triggers Priority No. 3. In addition, the proposed reallocation and change of community of license to Burgettstown would not result in a loss of local service to Steubenville since Stations WDIG(AM), WSTV(AM), and WBJV(FM) are licensed to the community. A staff engineering analysis has determined that Channel 278B can be allotted to Burgettstown in compliance with the Commission's minimum distance separation requirements at Keymarket's specified site.² Our engineering analysis also indicates that there are three Urbanized Areas affected: Wheeling, West Virginia-Ohio, Steubenville-Weirton, Ohio-West Virginia- Pennsylvania, and Pittsburgh, Pennsylvania. Since no site change is anticipated, coverage to the urbanized areas will remain unchanged. According to our analysis, Station WOGH(FM) currently covers 100 percent of the Steubenville-Weirton, Ohio-West Virginia-Pennsylvania Urbanized Area but less than 50 percent of the other two urbanized areas with the 70 dBu contour.

4. We do not intend to raise a Huntington and Tuck issue regarding the Wheeling, West Virginia-Ohio or Pittsburgh, Pennsylvania Urbanized Areas as Burgettstown is not located within these urbanized areas and the level of city grade coverage is less than 50% of the areas of the urbanized areas. See Headland, Alabama and Chatahooche, Florida, 10 FCC Rcd 10352 (1995). With respect to the Steubenville-Weirton, Ohio-West Virginia-Pennsylvania Urbanized Area, we recognize that

¹ 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).

² The coordinates for Channel 278B at Burgettstown are 40-20-32 and 80-37-14. Although Burgettstown is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government to the reallocation of Channel 278B from Steubenville to Burgettstown is not required since Station WOGH(FM) is not changing its assigned channel of operation or relocating its transmitter site. However, in the event this proposal is granted, the Canadian Government will be advised of the change to the FM Table of Allotments at the conclusion of this proceeding.

Burgettstown is not located within the urbanized area but that the level of city grade coverage will continue to be 100% of the area of the urbanized area. While our policy set forth in Headland, Alabama and Chattahooche, Florida requires a Huntington and Tuck showing where the proposed community of license is outside of an urbanized area but its level of city grade coverage is 50% or more, we do not propose to raise a Huntington and Tuck issue here because the level of coverage is already 100%. Under these circumstances, it cannot be said that the station is migrating to an urbanized area but it is already there. Nevertheless, Keymarket is invited to submit a Huntington and Tuck showing if it so desires to provide an alternate basis for resolving this issue.

5. As an additional matter, Station WOGH(FM) is a pre-1964 grandfathered station with short-spacings to pre-1964 Station WCRF-FM, Cleveland, Ohio and pre-1989 Station WANB-FM, Waynesburg, Pennsylvania. We recognize that in proposing this action, we are creating a new short-spaced allotment in contravention of Section 73.207 of the Rules. However, we have held that grandfathered FM stations that were in compliance with our Rules when authorized should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our rules, where there is no change in transmitter site. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992). We recently reaffirmed Newnan and Peachtree City, Georgia and its applicability to both pre-1964 and pre-1989 short-spaced stations. Oceanside and Encinitas, California, 15 FCC Rcd 15302 (1999) (pre-1964) and Fremont and Holton, Michigan, 14 FCC Rcd 17108 (1999) (pre-1989). We propose to apply the same approach to the instant case. Accordingly, as requested, we shall also propose to modify the license for Station WOGH(FM) to specify operation on Channel 278B at Burgettstown, Pennsylvania, as its new community of license. 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 278B at Burgettstown.

6. In view of the fact that the proposed allotment would provide a first local service to Burgettstown, Pennsylvania, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 278B to Burgettstown and modify the license for Station WOGH(FM) accordingly. 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 Steubenville and Burgettstown, as follows:

Community	Channel No.	
	Present	Proposed
Burgettstown, Pennsylvania	-----	278B
Steubenville, Ohio	278B	-----

7. 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.

8. Interested parties may file comments on or before March 5, 2001, and reply comments on or before March 20, 2001, 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's counsel, as follows:

Allan G. Moskowitz
Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N. W., Suite 1100
Washington, D. C. 20005

9. 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.

10. 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, 445 Twelfth Street, S.W., TW-A325, 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 Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.