

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.
(Lebanon and Speedway, Indiana)
MB Docket No. 02-143
RM-10392

NOTICE OF PROPOSED RULE MAKING

Adopted: June 5, 2002

Released: June 14, 2002

Comment Date: August 5, 2002
Reply Comment Date: August 20, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed on behalf of Radio One ("petitioner"), licensee of Station WYJZ(FM), Lebanon, Indiana, proposing to reallocate Channel 265A from Lebanon, Indiana, to Speedway, Indiana, and modify the license of Station WYJZ(FM) to reflect the changes. Petitioner pledges to file the necessary application to effectuate the changes, if granted.

2. Petitioner filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. In this case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal such as this, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.

3. In support of its proposal, petitioner states that it will serve the public interest because it would provide Speedway, Indiana with its first local aural transmission service and will not deprive Lebanon of local aural transmission service because Lebanon is also served by noncommercial educational Station WIRE(FM). In addition, it will allow Station WYJZ(FM), currently operating as a short-spaced Class A facility using a directional antenna, to operate as a fully-spaced Class A station and will eliminate two existing short-spacings between Station WYJZ(FM) and Station WMGI(FM), Terre Haute, Indiana, and Station WWKI(FM), Kokomo, Indiana. Thus, they claim the proposal is consistent

1 See Report and Order in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

2 The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)]. See Second Report and Order in BC Docket 80-130 ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1982).

with Commission policy of reducing or eliminating existing short-spacings.³

4. Petitioner also notes that Speedway is located in the Indianapolis Urbanized Area. It alleges that Speedway not only has sufficient indicia of community status to qualify as a community for allotment purposes, but also qualifies as an independent community, pursuant to an analysis using the factors delineated in *Faye and Richard Tuck ("Tuck")*.⁴ Petitioner argues that while Speedway does not meet all eight factors, it meets a majority of factors, and thus Commission precedent favors a finding of independence.⁵ We seek comment on this issue.

5. We believe that the proposal warrants consideration since it would enable Station WYJZ(FM) to expand its coverage area as well as eliminate its short-spacings to Stations WMGI(FM) and WWKI(FM). However, we note that our engineering analysis shows that from the proposed site, there appears to be a loss of service to approximately 35,000 persons. Petitioner is requested to address the relative gains and losses of the proposal and whether the proposal will serve the public interest given this loss of population. In addition, we need additional information on the service area of Station WIRE(FM) in Lebanon in order to determine whether the change of community would result in a preferential arrangement of allotments. Accordingly, we also request petitioner to submit information on the coverage of Station WIRE(FM) relative to the community of Lebanon. An engineering analysis has determined that Channel 265A can be allotted at Speedway at petitioner's requested site 4.9 kilometers (3.0 miles) southeast of the community.⁶

6. Accordingly, we seek comment 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>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Lebanon, Indiana	265A	---
Speedway, Indiana	---	265A

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

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 5, 2002, and reply comments on or before August 20, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal

³ See *Report and Order* in Docket No. 15969 (Eatontown, Point Pleasant and Red Bank, New Jersey), 1 FCC 2d (1965) see also *Report and Order* in MM Docket No. 99-240 (Albemarle and Indian Trail, North Carolina), 14 FCC Rcd 10524 (1999); *Report and Order* in MM Docket No. 90-138 (Newnan and Peachtree City, Georgia) 7 FCC Rcd 6307 (1992).

⁴ 3 FCC Rcd 5375 (1988).

⁵ See e.g., *Report and Order* in MM Docket No. 99-244 (Cumberland, Kentucky and Weber City, et al., Virginia) ___ FCC Rcd ___ (March 19, 2002); *Report and Order* in MM Docket No. 00-53 (Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota) 16 FCC Rcd 22581 (2001).

⁶ Coordinates for Channel 265A at Speedway are NL 39-46-10 NL and WL 86-13-45.

Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

J. Richard Carr
5528 Trent Street
Chevy Chase, MD 20815

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 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).

11. For further information concerning this proceeding, contact Victoria M. McCauley 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. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (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.