

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.
(Lake City and Chattanooga, Tennessee)
MB Docket No. 03-120
RM-10591

NOTICE OF PROPOSED RULE MAKING

Adopted: May 16, 2003

Released: May 20, 2003

Comment Date: July 11, 2003

Reply Date: July 28, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Ronald C. Meredith ("Petitioner"), requesting the allotment of Channel 244A at Lake City, Tennessee, as that community's first local audio service. Petitioner represents that if his request is granted, he will file an application for Channel 244A at Lake City, Tennessee, and that he will construct the facility if his application is granted. To accommodate the proposed allotment of Channel 244A at Lake City, Petitioner also requests the reclassification of Station WDOD-FM, Channel 243C, Chattanooga, Tennessee, to specify operation on Channel 243C0. An "Order to Show Cause" addressing this reclassification was issued on October 25, 2002, to WDOD of Chattanooga, Inc. ("WDODCI"), licensee of Station WDOD-FM, to show cause why its authorization should not be modified to specify operation on Channel 243C0 in lieu of Channel 243C at Chattanooga, Tennessee.1 In response, WDODCI states that it does not intend to seek authority to modify WDOD-FM's technical facilities to minimum Class C standards.2 As a result, we now proceed with a rulemaking to consider Petitioner's proposal.

2. Petitioner states that Lake City, Tennessee, is a community for allotment purposes. Lake City is an incorporated place with a population of 1,888 persons, according to the 2000 United States Census. Petitioner further states that Lake City is self-governing, with its own mayor, city council, fire department, chamber of

1 Because Station WDOD-FM is operating below minimum Class C standards, it is subject to reclassification as a Class C0 facility pursuant to Section 1.420(g), note 2, and Section 73.3574, note 4, of the Commission's Rules. See also 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21,649 (2000).

2 See letter from Coe W. Ramsey, counsel for WDODCI (filed November 26, 2002).

commerce, and public schools. In addition, Petitioner represents that there are numerous organizations and businesses located in Lake City, many of which incorporate “Lake City” in their names.

3. The proposed reference coordinates for Channel 244A at Lake City, Tennessee, are 36-12-08 North Latitude and 84-13-36 West Longitude.³ The allotment will require a site restriction of 6.7 km (4.2 miles) west of Lake City. The site restriction is necessary to protect Station WXJB-FM, Channel 243A, Harrogate, Tennessee, and Station WDOD-FM, Channel 243C0, Chattanooga, Tennessee. Channel 244A at Lake City will serve 136,729 persons from the proposed location.

4. This proposal warrants consideration because it complies with our technical requirements and would serve the public interest. We therefore shall commence a rulemaking to consider Petitioner’s proposal. Accordingly, we seek comment on the following proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Chattanooga, Tennessee	222C, 243C, 293C	222C, 243C0, 293C
Lake City, Tennessee	---	244A

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

6. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments on or before **July 11, 2003**, and reply comments on or before **July 28, 2003**, 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 any filing should be served on counsel for the Petitioner and parties, as follows:

Vincent Pepper, Esq.
 Womble, Carlyle, Sandridge & Rice, PLLC
 1401 Eye Street, N.W.
 Washington, D.C. 20005
 (Counsel for Petitioner, Ronald C. Meredith)

Coe W. Ramsey, Esq.
 Brooks Pierce McLendon
 Post Office Box 1800
 Raleigh, NC 27602
 (Counsel for WDODCI, licensee of WDOD-FM)

³ We have modified petitioner’s proposed reference coordinates for Channel 244A at Lake City (36-11-54 NL and 84-13-51 WL) to avoid a short-spacing.

7. 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. All 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, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. 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 Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

9. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket 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
Assistant Chief, Audio Division
Media Bureau

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 discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent 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 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.