

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-232
Table of Allotments,)	RM-10819
FM Broadcast Stations.)	
(Chase City, Virginia, and)	
Creedmoor, Ahoskie, Gatesville, and)	
Nashville, North Carolina))	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 12, 2003

Released: November 14, 2003

Comment Date: January 5, 2004

Reply Date: January 20, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Joyner Radio, Inc. ("Petitioner"), pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules. Petitioner requests the reallocation of Channel 260C3 from Chase City, Virginia to Creedmoor, North Carolina, and the modification of the license of Station WFXQ(FM) accordingly. In order to facilitate the reallocation of Channel 260C3 at Creedmore, Petitioner requests the substitution of Channel 257A for Channel 259A at Nashville, North Carolina, and the modification of the license of Station WZAX(FM) accordingly. Finally, in order to accommodate the substitution of Channel 257A at Nashville, Petitioner requests the reallocation of Channel 257A from Ahoskie to Gatesville, North Carolina, and the modification of the license of FM Station WQDK accordingly. Petitioner is the licensee of Station WFXQ(FM), Chase City, Virginia. Petitioner includes with its request copies of letters of consent from the licensees of Station WZAX(FM) and FM Station WQDK, respectively.¹ Petitioner states that it will apply for Channel 260C3 when allotted to Creedmoor, and further states that, when authorized, it will construct the facilities promptly and commence operation on Channel 260C3 at Creedmoor, North Carolina.

2. Petitioner states that adoption of its proposals will provide Creedmoor with its first local aural transmission service, and that Chase City, Virginia, will continue to receive local service from WMEK(AM) and reception service from eighteen FM radio stations. Petitioner also states that its proposal will provide Gatesville with its first local aural transmission service, and that Ahoskie, North Carolina, will continue to

¹ Petitioner submitted a copy of a consent document signed by Daniel Berman, President of MainQuad Broadcasting, Inc., licensee of Station WZAX(FM), Nashville, North Carolina, and a copy of a consent document signed by David Wilhelm, Managing Member of Ray-D-O-Biz Licenses LLC, licensee of FM Station WQDK, Ahoskie, North Carolina.

receive local service from noncommercial Station WBKU-FM on Channel 219C2 and reception service from seventeen other FM radio stations.

3. This proposal warrants consideration because the proposed allotment would provide Creedmoor with a first local aural broadcast transmission service. In support of the proposal, Petitioner states that Creedmoor is an incorporated place with a population of 2,232 persons, according to the 2000 U.S. Census. Creedmoor is self-governing with its own mayor, city manager, city commissioners, volunteer fire department, and public schools. There are numerous businesses and organizations located in Creedmoor, including a number of entities incorporating "Creedmoor" into their names. Creedmoor is not located within an urbanized area, and the 70 dBu contour of FM Station WFXQ at Creedmoor will provide a signal to less than 50 percent of the Raleigh, North Carolina Urbanized Area. For that reason, the proposed change in community does not require the submission of a *Tuck* analysis.²

4. The loss area of Channel 260C3 at Chase City contains 68,714 people and covers 4,802 square kilometers. After the proposed reallocation of Channel 260C3, no part of the loss area will be left with fewer than two full-time services. There will be 811 persons in an area of 74 square kilometers left with two full-time services, 4,278 persons in an area of 277 square kilometers left with three full-time services, and 9,328 persons in an area of 674 square kilometers left with four full-time services. The gain area of Channel 260C3 at Creedmoor consists of 556,759 persons in an area of 4,802 square kilometers. All of the gain area is already well-served with five or more full-time aural transmission services. The proposed reallocation of Channel 260C3 from Chase City to Creedmoor thus will produce a net gain of 488,045 persons. There will be no net gain nor loss in the land area served.

5. This proposal further warrants consideration because the proposal would provide Gatesville with a first local aural broadcast transmission service. Gatesville is an incorporated place with a population of 281 persons and is the county seat of Gates County, which has a population of 10,516 persons. Gatesville has a post office, fire department, and elementary school, as well as numerous businesses, several of which incorporate the name "Gatesville" into their names.

6. The loss area of Channel 257A at Ahoskie contains 22,167 persons and covers 1,487 square kilometers. After the proposed reallocation of Channel 257A, no part of the loss area would be left with less than four full-time services. There will be 678 persons in an area of 45 square kilometers left with four full-time services. The remainder of the loss area will continue to be well-served with at least five other full-time aural transmission services. The gain area of Channel 257A at Gatesville consists of 25,285 persons in an area of 1,487 square kilometers. All of the gain area is already well-served with five or more full-time aural transmission services. The proposed reallocation of Channel 257A from Ahoskie to Gatesville will produce a net gain of 3,118 persons. There will be no net gain nor loss in the land area served. Together with the net gain from the reallocation of Channel 260C3 at Creedmoor, the overall net gain from the two proposed changes in community of license is 491,163 persons.

7. The proposed allotments could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of

² *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). See also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951).

Allotments, Section 73.202(b) of the Commission's Rules, with respect to Ahoskie, Creedmoor, Gatesville, and Nashville, North Carolina, and Chase City, Virginia:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Ahoskie, North Carolina	219C2, 257A	219C2
Creedmoor, North Carolina	---	260C3
Gatesville, North Carolina	---	257A
Nashville, North Carolina	259A	257A
Chase City, Virginia	260C3	---

Proposed Coordinates for Channel 260C3 at Creedmoor, North Carolina: 36-06-56 NL and 78-30-22 WL, with a site restriction of 16.3 km (10.1 miles) east of Creedmoor.

Proposed Coordinates for Channel 257A at Gatesville, North Carolina: 36-17-02 NL and 76-43-40 WL, with a site restriction of 12.9 km (8.0 miles) south of Gatesville.

8. 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.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 29, 2003, and reply comments on or before January 13, 2004, 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, as follows:

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 Peter Gutmann
 Joan Stewart
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 1401 Eye Street, N.W. – Seventh Floor
 Washington, D.C. 20005
 (Counsel for Petitioner)

10. 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, Natek, 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. An 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.

11. 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).

12. 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.