

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| FM Table of Allotments, |) | MB Docket No. 04-204 |
| FM Broadcast Stations. |) | RM-10661 |
| (Calhoun, Georgia) |) | |
| |) | |
| Reclassification of License |) | |
| of Station WYSF(FM), Birmingham, Alabama |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: May 26, 2004

Released: May 28, 2004

Comment Date: July 19, 2004

Reply Comment Date: August 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by SSR Communications Incorporated (“Petitioner”) requesting the allotment of Channel 233A at Calhoun, Georgia, as its first FM commercial aural broadcast service.¹ This proposal requires the reclassification of Station WYSF(FM), Channel 233C, Birmingham, Alabama to specify operation on Channel 233C0.²

2. Station WYSF(FM) operates on Channel 233C with an effective radiated power (“ERP”) of 100 kilowatts (“kW”) at 309 meters height above average terrain (“HAAT”), which is below the minimum Class C antenna height of 451 meters HAAT. Station WYSF(FM) is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission’s *Second Report and Order*, MM Docket No. 98-93,³ Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission’s rules. Pursuant to the requirements set forth in Section 73.3573 Note 4, we issued an *Order to Show Cause*⁴ directed to Citadel Broadcasting Company (“Citadel”), licensee of Station WYSF(FM), Birmingham, Alabama, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. No response was received from Citadel. Therefore, in accordance with the Commission’s reclassification procedures noted above, the license for Station WYSF(FM) will be reclassified in the context of this proceeding to specify operation on Channel 233C0 instead of Channel 233C at Birmingham.

¹ AM Stations WJTH and WEBS are licensed to Calhoun.

² The distance between the required site for requested Channel 233A at Calhoun and Station WYSF(FM)’s licensed site at Birmingham is 220.3 kilometers. A minimum distance separation of 226 kilometers is required in this instance. However, if Station WYSF(FM) is reclassified to operate as a Class C0 facility, the short spacing issue will be eliminated.

³ See *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*.

⁴ See *Reclassification of License of Station WYSF(FM), Birmingham, Alabama*, 18 FCC Rcd 22027 (MB 2003).

3. Calhoun is an incorporated community located in Gordon County with a 2000 U.S. Census population of 10, 667 persons. In support of its proposal, Petitioner asserts that Calhoun is a *bone-fide* community for allotment purposes since it is home to many businesses and organizations identifying themselves with that locality. Calhoun has its own local government, school system, fire department, water treatment plant, and several churches, restaurants, and banks.

4. We believe that this proposal warrants consideration since it could provide a first FM commercial broadcast service to the community. A staff engineering analysis has determined that the reclassification of Station WYSF(FM) to specify operation on Channel 233C0 at Birmingham, Alabama will eliminate any short spacing to requested Channel 233A at Calhoun, using Petitioner’s requested site 10.8 kilometers (6.7 miles) east of the community. This site restriction also will ensure full-spacing to Station WMUU(FM)’s licensed Channel 233C facilities at Greenville, South Carolina.⁵

5. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, with respect to the communities listed below, as follows:

| <u>City</u> | <u>Present</u> | <u>Channel No.</u> | <u>Proposed</u> |
|---------------------|--|--------------------|--|
| Birmingham, Alabama | 229C, 233C, 243C0, 258C 284C, 295C0, 299C | | 229C, 233C0, 243C0, 258C, 284C, 295C0 299C |
| Calhoun, Georgia | --- | | 233A |

6. 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. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments or counterproposals on or before July 12, 2004, and reply comments on or before July 27, 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, SW, TW-A325, Washington, D.C. 20554. Counterproposal filed in this proceeding need only protect Station WYSF(FM), Birmingham, Georgia, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioners’ counsel, as follows:

Matthew K. Wesolowski
 General Manager
 SSR Communications Incorporated
 5270 West Jones Bridge Road
 Norcross, Georgia 30092-1628

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, 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

⁵ The reference coordinates for Channel 233A at Calhoun are 34-31-48 NL and 84-50-19 WL.

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.

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.⁶

9. For further information concerning this proceeding, contact Rolanda F. Smith (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 petitioners 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
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁶ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

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 petitioners. 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.