

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-420
Table of Allotments,)	RM-11119
FM Broadcast Stations.)	
(Morganfield and Corydon, Kentucky))	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 24, 2004

Released: November 26, 2004

Comment Date: January 18, 2005

Reply Comment Date: February 1, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making in which Union County Broadcasting Co., Inc., licensee of Station WMSK-FM, Morganfield, Kentucky ("Petitioner"), proposes the substitution of Channel 237C3 for Channel 237A at Morganfield and the reallocation of Channel 237C3 from Morganfield to Corydon, Kentucky, as the community's first local transmission service, and the modification of the license for Station WMSK-FM to reflect the changes. Petitioner pledges to file an application for the channel and will construct the facilities if the application is granted.

2. Petitioner filed this 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.¹ In considering a reallocation proposal, 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.²

3. In support of the petition, Petitioner states that its proposal will serve the public interest, it would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in *Change of Community R&O*.³ First, the allotment of Channel 237C3 at Corydon is mutually exclusive with the current use of Channel 237A at Morganfield. Second, the community of Morganfield (2000 U.S. Census population 1,581) would not be deprived of its only local service.⁴ Third, the proposal would provide a first local aural transmission service at Corydon, fulfilling Priority three of the FM Allotment Priorities, which will result in a preferential arrangement of allotments over the retention of a

¹ See *Amendment of the Commission's Rules Regarding 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, 5 FCC Rcd 7094 (1990).

² See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). 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)].

³ Petitioner notes that it currently holds a construction permit (File No. BPH-20010926AAD) to upgrade Station WMSK-FM to Channel 237C3 at Morganfield. It has not constructed that facility and has not filed an application for license to cover that permit.

⁴ Station WMSK(AM) will remain in Morganfield.

second local transmission service at Morganfield, under Priority four. In addition, Petitioner includes information regarding the gain and loss of service resulting from the upgrade and reallocation. It states that the proposed operation will result in a net gain in population of 132,373 persons within the 60 dBu signal strength contour of the station. It also states that there will be no loss area and no white or gray area created. Our engineering analysis shows that the gain area would be 2,287 square kilometers with a population of 129,403 persons, within which 7.3 square kilometers with a population of 104 persons would receive its fourth service, and an unpopulated area of 21.5 square kilometers would receive its fifth service. Our engineering analysis confirms Petitioner’s representations that there will be no loss area and no white or gray area.

4. In further support of the reallocation, Petitioner states that Corydon is a community for allotment purposes, that it is not in any urbanized area, and that its proposed 70 dBu will cover less than 50 percent of any urbanized area.⁵ In support of its community status, Petitioner states that Corydon is an incorporated community with a 2000 U.S. Census population of 744 persons. It has its own zip code and post office. It has a mayor, city council, city attorney, town clerk, public works clerk and fire department. Further, Petitioner states that Corydon has numerous businesses, and eleven churches, many of which incorporate Corydon in their names.

5. We find that Corydon is a community for allotment purposes. We believe that the proposal warrants consideration because it would provide Corydon with a first local aural transmission service without depriving Morganfield of its sole local transmission service. Channel 237C3 has been proposed to be reallocated at Corydon at petitioner’s proposed site 11.1 kilometers (6.9 miles) southwest 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>Present</u>	<u>Channel</u>	<u>Proposed</u>
Morganfield, Kentucky	237A		---
Corydon, Kentucky	---		237C3

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. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments or counterproposals on or before January 18, 2005, and reply comments on or before February 1, 2005, 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. Additionally, a copy of such comments should be served on Petitioners’ counsel, as follows:

John F. Garziglia, Esq.
 Howard J. Barr, Esq.
 Womble Carlyle Sandridge & Rice

⁵ See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

⁶ The coordinates for Channel 237C3 at Corydon 37-41-31 NL and 87-48-45 WL.

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

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, 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. 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.⁷ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

11. For further information concerning this proceeding, contact Victoria M. McCauley (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

⁷ *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, 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) Petitions for rule making which conflict with the proposals in this *Notice* 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, 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, 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.