

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

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 04-12
FM Table of Allotments,) RM-10843
FM Broadcast Stations.)
(Russellville and Littleville, Alabama))

NOTICE OF PROPOSED RULEMAKING

Adopted: January 14, 2004

Released: January 20, 2004

Comments Date: March 12, 2004
Reply comments Date: March 29, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WMXV, Russellville, Alabama. Clear Channel requests the reallocation of Channel 278A from Russellville, Alabama, to Littleville, Alabama, and the modification of the authorization for Station WMXV to reflect the change. Clear Channel stated its intention to file an application for Channel 278A at Littleville, Alabama.

2. Clear Channel 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. 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.

3. In support of the petition, Clear Channel states that Channel 278A can be allotted to Littleville, Alabama, in compliance with Section 73.207 of the Commission's Rules. Clear Channel further states that the community of Littleville has been incorporated since 1956 and has a population of 978 people according to the 2000 Census. The community is governed by a mayor, city clerk and town council which all have offices in the Littleville Town Hall. Littleville provides municipal services to its residents, has a volunteer fire department, senior citizen center, local school system, four churches and local businesses to serve the community. Clear Channel believes that Littleville's characteristics demonstrate that it deserves its own local transmission service. Clear Channel states that its proposal will provide a first local service for Littleville while Russellville will not be deprived of its sole aural

1 See Modification of FM and TV Authorizations to Specify a new Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

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 priorities (2) and (3)], See Revision of FM Assignment Policies and Procedures, 90 FCC2d 88, 91 (1988).

transmission service as Stations WGOL(AM) and WKAX(AM) will continue to serve the community. According to Clear Channel, Littleville is not part of any urbanized area and the principal community contour of a station operating on the proposed allotment at maximum facilities from the proposed reference coordinates would not encompass 50 percent of any urbanized area. Clear Channel also states that the proposed reallocation will have neither a gain or loss area as the proposed reference coordinates for the requested allotment at Littleville are the same as the current coordinates for the existing operation of Station WMXV at Russellville.

4. We believe that the proposal warrants consideration since the reallocation could provide Littleville with its first local aural transmission service. An engineering analysis shows that Channel 278A can be allotted to Littleville in compliance with the Commission’s spacing requirements at coordinates 34-35-44 and 87-40-47. This site is .6 kilometers (.4 miles) northwest of the community of Littleville. Russellville will continue to receive local service from AM Stations WGOL and WKAX. Our analysis confirms that there will be no loss or gain in service as Station WMXV will remain at its current licensed site. As Clear Channel has stated its intention to use its current authorized transmitter site for Station WMXV, it will be expected to specify its current authorized site for Station WMXV for the applications for a construction permit and a license for Station WMXV, Littleville. Should an alternate site be selected for the allotment of channel 278A at Littleville, Clear Channel will be required to provide a gain and loss study. We further show that from the current site, Station WMXV will continue to provide service to 18 percent of the Florence, Alabama Urbanized Area. The reallocation of Channel 278A to Littleville falls under priority 3), first local service, while retention of Channel 278A at Russellville is considered under priority 4), other public service. As requested, we shall propose to modify the license for Station WMXV to specify operation on Channel 278A at Littleville, Alabama, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission’s Rules, we shall not accept competing expressions of interest in the use of Channel 278A at Littleville.

5. 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>
Littleville, Alabama	-----		278A
Russellville, Alabama	278A		-----

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.

7. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments or counterproposals on or before March 12, 2004, and reply comments on or before March 29, 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. Additionally, a copy of such comments should be served on Clear Channel’s counsel, as follows:

Marissa G. Repp
 Hogan & Hartson L.L.P.
 555 Thirteenth Street, N.W.

Washington, D. C. 20004-1109

8. Parties are required to 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.

9. 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.³

10. For further information concerning this proceeding, contact Kathleen Scheuerle, (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

³ 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.