

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.
(Guntown and Booneville, Mississippi)
MB Docket No. 05-80
RM-11160

NOTICE OF PROPOSED RULE MAKING

Adopted: March 2, 2005

Released: March 4, 2005

Comment Date: April 25, 2005

Reply Comment Date: May 10, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc., ("Petitioner"), licensee of Station WBIP-FM, Channel 257A, Booneville, Mississippi. Petitioner proposes to substitute Channel 257C3 for Channel 257A at Booneville, reallocate Channel 257C3 to Guntown, Mississippi, and modify the license of Station WBIP-FM to reflect those changes. Petitioner pledges to file an application to implement this reallocation and asserts that it would provide first local service to Guntown.

2. Petitioner filed this proposal for reallocation in accordance with the provisions of Section 1.420(i),¹ 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.² 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

3. In support of the petition, Petitioner states that its proposal would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in Change of Community R&O. First, the proposed allotment of Channel 257C3 at Guntown is mutually exclusive with the current use of Channel 257A at Booneville. Second, Booneville will not be deprived of its only local service because it is served by Stations WBIP(AM) and WMAE-FM. Third, under Priority Three, the proposal would provide a first local service at Guntown.

4. Petitioner states that the reallocation of WBIP-FM to Guntown will result in a predicted net gain in population of 101,161 persons within the 60 dBu contour of the station. According to the

1 47 C.F.R. §1.420(i).

2 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).

3 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 priorities (2) and (3)].

Petitioner, the entire loss area will continue to be well-served by at least 5 other aural services. Petitioner also states that a *Tuck*⁴ analysis is not necessary because Guntown is not located in an Urbanized Area, and its proposed 70 dBu will not cover any portion of an Urbanized Area.⁵

5. Guntown is incorporated and listed in the 2000 U.S. Census, with a population of 1,183 persons. Petitioner states that Guntown has its own local government with a mayor, police, fire, and water departments. Additionally, Guntown has a number of local businesses that identify with the community by using Guntown in their names: Guntown Antiques, Guntown Beauty Supply, Guntown Cafeteria, and Guntown Liquor & Wine according to Petitioner.

6. We believe that the proposal warrants consideration because it would provide Guntown with a first local service without depriving Booneville of its sole local service.⁶ Channel 257C3 can be allotted to Guntown at coordinates located 34-21-42 North Latitude and 88-35-34 West Longitude with a site restriction of 11.1 kilometers (6.9 miles) southeast of the community.

7. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),⁷ for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Booneville, Mississippi	257A		---
Guntown, Mississippi	---		257C3

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

9. Pursuant to Sections 1.415 and 1.419,⁸ interested parties may file comments or counterproposals on or before April 25, 2005, and reply comments on or before May 10, 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:

Clear Channel Broadcasting Licenses, Inc.
 Mark N. Lipp, Esquire
 Vinson & Elkins L.L.P.
 1455 Pennsylvania Ave., N.W.
 Suite 600
 Washington, D.C. 20004-1008

10. Parties who choose to file by paper must file an original and four copies of each filing.

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

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

⁶ Booneville would continue to be served by noncommercial educational Station WMAE-FM and full-time AM Station WBIP.

⁷ 47 C.F.R. § 73.202(b).

⁸ 47 C.F.R. §§ 1.415 and 1.419.

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 Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. Section 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

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).⁹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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. Section 3506(c)(4).

12. For further information concerning this proceeding, contact Helen McLean (202) 418-2738. 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

⁹ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules.* 46 FR 11549 (Feb. 9, 1981).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), 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* 47 C.F.R. Section 1.420(d).)

(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 47 C.F.R. Sections 1.415 and 1.420, 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* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, 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.