

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MB Docket No. 05-115
FM Broadcast Stations.) RM-11202
(High Point and Liberty, North Carolina))
)
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Comment Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rulemaking filed by Capstar TX Limited Partnership ("Petitioner"), licensee of Station WVBZ(FM), High Point, North Carolina. The Petitioner requests the reallocation, downgrade, and modification of its license for Station WVBZ(FM) from Channel 262C at High Point, North Carolina, to Channel 262C0 at Liberty, North Carolina. The Petitioner states its intention to apply for the allotment and to construct the facilities if the application is granted.

2. The 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. In reviewing a proposal under Section 1.420(i), the Commission compares the existing and proposed arrangement of allotments to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM allotment priorities. In addition, the rule requires that the station's amended allotment be mutually exclusive with the station's present channel.

3. In support of its proposal, the Petitioner contends that its proposal will result in a preferential arrangement of allotments because it will provide a first local service at Liberty (population 2,661), triggering Priority 3. By way of comparison, the Petitioner asserts that retaining the station at High Point (population 85,839) would be a sixth local service under less significant Priority 4. Further, the Petitioner contends that the reallocated and downgraded channel will provide a gain in service to 1,419,750 persons and a loss of service to 201,019 persons, for a net gain of service to 807,793 persons. The Petitioner also

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; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1988).

states that the people in the loss area will continue to be well served with five or more aural services.

4. The Petitioner alleges that Liberty is a community for allotment purposes because it is incorporated and listed in the U.S. Census. The Petitioner also sets forth various indicia of community status. Liberty has its own town hall, mayor, town manager, and town council; the town provides many municipal services including water, sewer, and trash, and has its own police and fire departments. The community also has numerous businesses, restaurants, doctor offices, churches, and civic organizations.

5. Beyond establishing the community status of Liberty, the Petitioner contends that the community warrants a first local service preference under Priority 3. In this regard, the Petitioner states that High Point, the current community of license for Station WVBZ(FM), is itself an Urbanized Area, while Liberty is not located within any Urbanized Area as defined by the U.S. Census. The Petitioner asserts that the present 70 dBu contour of Station WVBZ(FM) encompasses 100 percent of the population and 100 percent of the area of the Burlington, Greensboro, High Point, and Winston-Salem, North Carolina, Urbanized Areas. The Petitioner further alleges that the proposed Channel 262C0 70 dBu contour from the reference coordinates for Liberty will encompass 100 percent of the population and 100 percent of the area of the Burlington, Durham, Greensboro, and High Point North Carolina Urbanized Areas. Because the proposal involves relocation from an Urbanized Area to a non-Urbanized Area and because the allotment already provides significant service to several Urbanized Areas, the Petitioner argues that no *Tuck*³ showing is required to demonstrate the independence of Liberty from these Urbanized Areas. However, out of an abundance of caution, the Petitioner did submit a *Tuck* showing.⁴

6. This proposal complies with the Commission's technical rules and warrants consideration because it could provide Liberty with its first local service. In addition, the proposal appears to satisfy the requirements of Section 1.420(i) because Station WVBZ(FM)'s existing and proposed channels are mutually exclusive with each other and because a first local service at Liberty under Priority 3 would be preferable to retaining a sixth local service at High Point. Although the Petitioner contends that no *Tuck* showing is required, we need not reach this issue because a showing was submitted and because a majority of the eight *Tuck* factors appear present.⁵

7. Liberty has an independent monthly newspaper, and residents read two county newspapers, a daily and a weekly, factor (2); community leaders and residents perceive themselves as separate from the Burlington, Durham, Greensboro, and High Point, North Carolina, Urbanized Areas, factor (3); Liberty has a local government, including a town hall, mayor, town manager, and a five member town council, factor (4); Liberty has a number of businesses, including national chains and locally-owned establishments, and doctors' offices, factor (6); and the town of Liberty provides many municipal services, including water, sewer, trash, police, and firefighting. Two other factors are partially present. Liberty does not have its own phone book but is listed as a separate section in the Randolph County phone book, and it currently shares a zip code with Kimesville, North Carolina, factor (5). Even though Liberty is part

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

⁴ See Capstar's rulemaking petition at 5-10.

⁵ The eight *Tuck* factors are (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Faye and Richard Tuck*, 3 FCC Rcd at 5378.

of the Greensboro, High Point, Winston-Salem, North Carolina Arbitron market, the Petitioner states that Liberty is located a considerable distance from these other municipalities and that advertisers can target Liberty residents by advertising the *The Liberty Leader*, factor (7). Insufficient information is presented to make a determination on the extent to which the community residents work in the larger metropolitan areas rather than the specified community. Comment is solicited on the Petitioner’s *Tuck* showing, as well as our tentative analysis.

8. Channel 262C0 can be allotted at the Petitioner’s proposed site, which is located 17.6 kilometers (11.0 miles) northeast of Liberty, in compliance with the Commission’s minimum distance mileage separations.⁶ The reference coordinates for this proposed allotment are 35-58-57 and 79-27-29.

9. 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>Proposed</u>
High Point, NC	238C1, 258C, 262C	238C1, 258C
Liberty, NC	---	262C0

10. We also propose to modify Station WVBZ(FM)’s license to specify operation on Channel 262C0 at Liberty, North Carolina, in lieu of Channel 262C at High Point, North Carolina.

11. 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.

12. Pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 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 the petitioner, as follows:

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 (Counsel for Capstar TX Limited Partnership)

13. 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

⁶ 47 C.F.R. § 73.207.

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. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

14. 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 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. 3506(c)(4).

15. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau (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 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 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 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 Making 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 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) 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 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. 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* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, 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 (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.