

**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.)	
(Mercer and Hermitage, Pennsylvania))	MB Docket No. 05-145
)	RM-11212
)	
(Caliente and Moapa, Nevada))	MB Docket No. 05-146
)	RM-11213

NOTICE OF PROPOSED RULE MAKING

Adopted: March 21, 2005

Released: March 23, 2005

Comment Date: May 10, 2005

Reply Comment Date: May 25, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a change of community of license. Each Petitioner states that it will file an application for construction permit to effectuate the change of community if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the Petitioners filed its 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 each case, the amended allotment would be mutually exclusive with the station's present 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*.²

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

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining five separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We seek comments on the following proposals:

A. MB Docket No. 05-145; RM-11212

Petitioner: Cumulus Licensing LLC

c/o Mark N. Lipp, Esq.
 Vinson and Elkins, L.L.P.
 1455 Pennsylvania Ave., N.W, Suite 600
 Washington, D.C. 20004-1008

Proposal: Cumulus Licensing LLC proposes the reallocation of Channel 280A from Mercer to Hermitage, Pennsylvania, and the modification of Station WWIZ(FM)'s license accordingly.³

<u>Community</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Mercer, Pennsylvania	244A, 280A		244A
Hermitage, Pennsylvania	--		280A

Coordinates: The reference coordinates for Channel 280A at Hermitage are 41-12-16 NL and 80-21-49 WL. This allotment requires a site restriction of 7.8 kilometers (4.9 miles) southeast to avoid a short-

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 (1982).

³ In support of its proposal, Petitioner states that Hermitage is an incorporated city with a 2000 U.S. Census population of 16,157 persons. Hermitage has a U.S. Post Office and zip code (16148). Petitioner further states that the city has fire and police departments, schools, banks, restaurants, health care practitioners, religious and community organizations. It is governed by a five-member Board of Commissioner. In addition to these elected officials, Hermitage has the following departments: Administration and Finance, Building and Inspection, Code Enforcement and Health, Community and Economic Development, Fire Parks and Recreation, Planning and Development, Police, Street, Treasurer, Wage, Tax, Water Pollution Control, and Zoning. The city also has Authorities, Boards, and Commissions, including the Board of Appeals, Board of Health, Civil Service Commission, Economic Development Commission, and Human Relations Commission. Hermitage has a business park (LindenPointe), a number of commercial establishments, with many of the local businesses identifying with the community by using "Hermitage" in their names.

spacing to the licensed and construction permit site for Station WOGF(FM), Channel 282B, East Liverpool, Ohio. Since Hermitage is located within 320 kilometers of the U.S. Canadian border, concurrence of the Canadian government has been requested. In addition, this allotment is short-spaced to vacant Channel 280C1 in Woodstock, Ontario, and we have requested Canadian concurrence of Channel 280A at Hermitage, Pennsylvania, as a specially- negotiated, short-spaced allotment.

Additional Information: The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 “grandfathered” short-spacings and those permitted under Section 73.215 of the Commission’s Rules when no site relocation is proposed.⁴ Consistent with that policy, we note that Station is a pre-1989 “grandfathered” station and is short-spaced to Station WRTS(FM), Channel 279B, Erie, Pennsylvania, which is also a pre-1989 “grandfathered” station. However, since Station WWIZ(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WWIZ(FM) should be afforded the opportunity to change its community of license.

The reallocation of Channel 280A to Hermitage, Pennsylvania, will provide the community with its first local aural transmission service, without depriving Mercer (population 1,183) of its sole local service. Station WLLF(FM) will remain licensed to the community. An engineering analysis has determined that Hermitage is located within the Youngstown, Ohio Urbanized Area, and that its 70 dBu signal will encompass 10.1 percent of that Urbanized Area. Accordingly, Petitioner has provided the required *Tuck* analysis.⁵ Although Petitioner does not seek to relocate its transmitter site, it has increased Station WWIZ(FM)’s power from 3 to 6 kilowatts, which will serve a gain area encompassing 676.3 square kilometers with a population of 108,216 persons. In accordance with the provisions of Section 1.420(i) of the Commission’s Rules, we will not accept competing expressions of interest for the use of Channel 280A at Hermitage, Pennsylvania, or require Petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

FCC Contact: Sharon P. McDonald, Media Bureau, 202-418-2180.

⁴ See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*; and *Berlin and North Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) ((pre-1964 “grandfathered” short-spacing); *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 “grandfathered” short-spacing); and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

⁵ *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck (“Tuck”)*, 3 FCC Rcd 5374 (1988).

B. MB No. 05-146; RM-11213

Petitioner: Aurora Media, LLC
c/o Marnie K. Sarver, Esq.
Wiley, Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

Proposal: Aurora Media, LLC, proposes the reallocation of Channel 233C from Caliente to Moapa, Nevada, and the modification of its new FM station construction permit (File No. BNPH-20050103AFD) accordingly.⁶

<u>Community</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Caliente, Nevada	233C		--
Moapa, Nevada	---		233C

Coordinates: The reference coordinates for Channel 233C at Moapa are 37-14-37 NL and 114-36-01. This allotment requires a site restriction of 63.0 kilometers (39.2 miles) north at Petitioner's authorized construction permit site.

Additional Information: The reallocation of Channel 233C to Moapa, Nevada, will provide the community with its first local aural transmission service, without depriving Caliente (population 1,123) of its sole local service. Petitioner advises that the station is unbuilt, and that for change of community purposes, the Commission does not consider an unbuilt station an "existing service" because the station is not operational. An engineering analysis has determined that Moapa is not located within or near an urbanized area and a *Tuck* analysis is not necessary.⁷ Moreover, Petitioner does not seek to relocate its transmitter site, a gain and loss area study is not required. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 233C at Moapa, Nevada, or require Petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

⁶ In support of its proposal, Petitioner states that Moapa is a Census Designated Place located in Clark County, Nevada, and has a 2000 U.S Census population of 928 persons. Moapa has a U.S Post Office and a zip code (89025). The town has a five-member Town Advisory Board, its own Moapa Branch of the Clark County Library, its own elementary school, volunteer fire department, and recreation facilities. Petitioner further states that the Marley P. Robinson Justice Court is located in Moapa, as well as two churches, several construction companies, manufacturing plants, service stations, an equipment repair center, an RV park, and variety of retail businesses providing consumer goods and services to local residents. Petitioner advises that the Moapa Indian Reservation is located adjacent to the town of Moapa and would benefit from the service provided by a local radio station.

⁷ See Footnote 5, *supra*.

FCC Contact: Sharon P. McDonald, Media Bureau, 202-418-2180.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference **only** the specific docket to which the filing pertains. 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 in paragraph 2 of the *Appendix* before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, (47 C.F.R. §§ 1.415, 1.419) interested parties may file comments on or before May 10, 2005, and reply comments on or May 25, 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 any filing should be served on the Petitioner listed for the particular docket.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 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).

7. 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, 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. 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.**

⁸ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact the FCC contact listed for that proceeding. 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 Petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that 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

APPENDIX

1. Pursuant to authority found in Sections 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the M 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 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 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. 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., Room 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 Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.