

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-150
Table of Allotments,)	RM-11214
FM Broadcast Stations.)	
(Norfolk and Windsor, Virginia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 23, 2005

Released: March 25, 2005

Comment Date: May 12, 2005

Reply Comment Date: May 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making in which Clear Channel Broadcasting, Licenses, Inc., licensee of Stations WKUS(FM), Norfolk, Virginia and WJCD, Windsor, Virginia ("Petitioner"), proposes the reallocation of Channel 299A from Windsor to Norfolk, Virginia and the reallocation of Channel 287B from Norfolk to Windsor, Virginia, and the modification of the license for Station WKUS(FM) to reflect Windsor as its community of license and the modification of the license of Station WJCD(FM) to reflect Norfolk as its community of license. Petitioner pledges to file applications for each channel and to construct the facilities if the applications are granted.

2. Petitioner filed these proposals 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*. First, the proposed allotment of Channel 299A at Norfolk is mutually exclusive with the current use of Channel 299A at Windsor. Second, the proposed allotment of Channel 287B at Windsor is mutually exclusive with the current use of Channel 287B at Norfolk. Third, neither community would be deprived of its sole local aural transmission service. The community of Norfolk, 2000 U.S. Census population 234,403 persons, would continue to be served by 9 FM stations

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)].

and 5 AM stations.³ The proposal would retain a first local aural transmission service at Windsor, under Priority (3). Finally, Petitioner states that the two reallocations would serve the public interest under Priority (4) because the overall gain in population from the proposed reallocation of Channel 299A from Windsor to Norfolk would be 1,023,941 persons. They argue that while the reallocation of Channel 287B from Norfolk to Windsor would result in a net loss in population of 37,417 persons within the WKUS(FM) 60dBu contour, this loss is more than overcome by the substantial gains of the proposal as a whole, and the entire area is well served by 5 or more other aural services. We seek comment on the public interest benefits of the change of communities.

4. In further support of the reallocation, Petitioner claims that Windsor has been determined to be qualified as a community by virtue of the allotment of Channel 299A.⁴ Windsor is listed in the 2000 U.S. Census with a population of 933 persons and therefore is presumed to have the status of a community for allotment purposes.⁵ We seek comment on the community status of Windsor, Virginia.

5. We believe that the proposal warrants consideration because it would retain Windsor’s sole local aural transmission service without depriving Norfolk of local transmission service.⁶ Channel 299A has been proposed to be reallocated at Norfolk at a site 9.3 kilometers (5.8 miles) north of the community.⁷ Channel 287B has been proposed to be reallocated to Windsor at a site 12.7 kilometers (7.9 miles) east of the community.⁸

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>Proposed</u>
Norfolk, Virginia	239B, 254B, 259B, 263B, 275B, 283B, 287B	239B, 254B, 259B, 263B, 275B, 283B, 299A
Windsor, Virginia	299A	287B

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 May 12, 2005, and reply comments on or before May 27, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the

³ Stations WXMM(FM), WYFI(FM), WVKL(FM), WOWI(FM), WNSB(FM), WHRV(FM), WHRO-FM, WNOR(FM), WNVZ(FM), and AM Stations WNIS(AM), WTAR(AM) WVXX(AM), WYRM(AM), and WJOI(AM) will remain in Norfolk.

⁴ See *Windsor, Virginia*, 2 FCC Rcd 4229 (1987).

⁵ See *Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992), *rec. den.* 13 FCC Rcd 18894 (1998).

⁶ We note that grant of the reallocation of Channel 299A from Windsor to Norfolk will be conditioned on the commencement of operation of Station WKUS on Channel 287B at Windsor.

⁷ The coordinates for Channel 299A at Norfolk are 36-55-26 NL and 76-15-05 WL.

⁸ The coordinates for Channel 287B at Windsor are 36-48-47 NL and 76-35-57 WL.

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 Petitioner's counsel, as follows:

Mark N. Lipp, Esq.
Scott Woodworth, Esq.
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004-1008

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 Marlene H. Dortch, Secretary, Office of the 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.**

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.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. 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

⁹ 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).

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 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.