

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

In the Matter of )
)
Amendment of Section 73.202(b) ) MB Docket No. 12-51
FM Table of Allotments, ) RM-11647
FM Broadcast Stations. )
(Westfield, New York) )

NOTICE OF PROPOSED RULEMAKING

Adopted: March 1, 2012

Released: March 2, 2012

Comments Date: April 23, 2012

Reply Comments Date: May 8, 2012

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Connoisseur Media of Erie, LLC ("Petitioner"), proposing the allotment of Channel 265A at Westfield, New York, as its first local service.1 In compliance with the Commission's new procedures,2 Petitioner has concurrently filed an FCC Form 301 application for Channel 265A at Westfield, and the necessary filing fees.3

2. Petitioner proposes the allotment of Channel 265A at Westfield, New York, as its first local transmission service. In this regard, Petitioner states that Westfield was established in 1823, and has a 2000 U.S. Census population of 5,232 persons.4 It states that Westfield is governed by a town supervisor and town council. It has its own real estate assessor, tax collector, and town court that is administered by two justices. The Petitioner contends that Westfield is home to schools, a library, and a museum and historical society. It states that the community has also an established business development corporation and is home to several local businesses.

3. Channel 265A can be allotted to Westfield consistent with the minimum distance separation requirements of the Rules with a site restriction 3.4 kilometers (2.1 miles) west of the community. The reference coordinates are 42-18-51 NL and 79-37-04 WL.5 The allotment of Channel 265A at Westfield

1 To accommodate this allotment, Petitioner filed a hybrid application, proposing the substitution of Channel 285B1 for Channel 265B1 at North East, Pennsylvania, and modification of the license of Station WRKT(FM) to reflect this change. See File No. BPH-20110509AAL.

2 Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, 21 FCC Rcd 14212, 14223 ¶ 18 (2006).

3 See File No. BNPB-20110603AAQ.

4 Westfield has a 2010 U.S. Census population of 4,896 persons.

5 A staff engineering analysis has determine that there are rule-compliant sites available were the proposed allotment could be modified, through a minor modification application, to cover at least fifty percent of the Erie Urbanized Area ("UA") while maintaining an one hundred percent city-grade coverage for the community of Westfield. See Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), recon pending ("Rural Radio"). Therefore, consistent with Rural Radio, it would be necessary for the Petitioner to file showing to rebut the presumption that we should treat this proposed allotment as providing a new

(continued...)

is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

4. The Petitioner’s proposal warrants consideration. Therefore, we will solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to Westfield, New York:

	Channel No.	
Community	Present	Proposed
Westfield, New York	-----	265A

5. 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.

6. Interested parties may file comments on or before April 23, 2012, and reply comments on or before May 8, 2012, 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 Petitioner, as follows:

Brendan Holland, Esq.  
 Davis Wright Tremaine LLP  
 1919 Pennsylvania Avenue, N.W.  
 Suite 800  
 Washington, D.C. 20006

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 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to the 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.**

8. 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)

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service to the Erie UA. Absent a successful showing, the proposal will be considered under Priority 4, other public interest considerations. The Petitioner may file a public interest showing under Priority 4.

of the Commission's Rules.<sup>6</sup> This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "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).

9. For further information concerning this proceeding, contact Rolanda F. Smith, (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

Nazifa Sawez  
Assistant Chief  
Audio Division  
Media Bureau

Attachment: Appendix

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<sup>6</sup> *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.