

**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. 14-66
FM Broadcast Stations.	)	RM-11689
(Custer, Michigan)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: April 23, 2014**

**Released: April 25, 2014**

**Comment Date: June 16, 2014**

**Reply Comments Date: July 1, 2014**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making (“Petition”) filed by Roy E. Henderson (“Henderson”), licensee of FM Station WCUZ, Bear Lake, Michigan. Henderson proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s rules, by substituting Channel 260A for vacant Channel 263A at Custer, Michigan.<sup>1</sup> This proposal is part of a contingently filed “hybrid” application and rulemaking petition.

2. **Background.** In his contingent application, Henderson proposes to upgrade Station WCUZ(FM), Bear Lake, Michigan, from Channel 261A to Channel 264C3.<sup>2</sup> To accommodate that proposed modification, Henderson filed his Petition to substitute Channel 260A for vacant Channel 263A at Custer, Michigan. In order to facilitate the channel substitution, Henderson requested the reclassification of Station WUGN(FM), Channel 259C, Midland, Michigan, to specify operation on Channel 259C0.<sup>3</sup> We issued to Family Life, licensee of Station WUGN(FM), an *Order to Show Cause*<sup>4</sup> why that station should not be reclassified as a C0 facility, and we have ordered that reclassification in a letter, released concurrently with this Notice of Proposed Rule Making.<sup>5</sup>

<sup>1</sup> Henderson also filed a “Supplement to Petition for Rule Making” (May 11, 2012), containing a certification by his technical consultant.

<sup>2</sup> See File No. BPH-20120301ADL.

<sup>3</sup> See Petition at 2. See also *1988 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649, 21664 (2000) (holding that “the [C to C0] reclassification procedure ... may be initiated through the filing of an original rule making petition to amend the FM Table of Allotments”) (“*Radio Streamlining Order*”).

<sup>4</sup> *Reclassification of License of Station WUGN(FM) Midland, Michigan*, Order to Show Cause, 28 FCC Rcd 119 (MB 2013).

<sup>5</sup> See *Letter to Peter Gutmann and John C. Trent from Peter H. Doyle*, DA 14-551 (April 25, 2014).

3. **Discussion.** The proposed change in the FM Table of Allotments warrants consideration, because it complies with our technical requirements and could serve the public interest. The channel substitution will allow Henderson to upgrade his operations on Station WCUZ(FM), Bear Lake, Michigan, while preserving the Class A vacant allotment at Custer. The Government of Canada has concurred in the allotment of Channel 260A at Custer, Michigan, which is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

4. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Custer, Michigan, as set forth below:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Custer, Michigan	263A	260A

**Proposed Coordinates for Channel 260A at Custer, Michigan:** 43-58-16 NL and 86-19-42 WL.

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

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,<sup>6</sup> interested parties may file comments on or before June 16, 2014, and reply comments on or before July 1, 2014, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on counsel for Henderson, as follows:

John C. Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
200 S. Church Street  
Woodstock, Virginia 22664

7. Parties must file an original and four paper 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. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the Commission's headquarters building located at 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554. 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 Marlene H. Dortch,**

<sup>6</sup> See 47 C.F.R. §§1.415 and 1.419.

**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.**

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) of the Commission's Rules.<sup>7</sup> 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.<sup>8</sup>

9. For further information concerning these proceedings, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072. For purposes of these restricted notice and comment rule making proceedings, 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 in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Henderson 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez  
Assistant Chief  
Audio Division  
Media Bureau

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<sup>7</sup> See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

<sup>8</sup> See 44 U.S.C. 3506(c)(4).

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**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 counsel for the petitioner, as indicated. 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.