

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

MM Docket No. 90-412

In the Matter of

Amendment of Section 73.202(b), RM-7289
Table of Allotments,
FM Broadcast Stations.
(Marion and Rural Retreat, Virginia)

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: August 24, 1990; Released: September 14, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by James K. Cornick (petitioner) requesting the allotment of Channel 278A to Marion, Virginia, as the community's third local FM service. In order to accommodate the allotment at Marion, petitioner additionally requests the substitution of Channel 237A for Channel 276A at Rural Retreat, Virginia. Petitioner states that he will apply for Channel 278A, if allotted to Marion.

2. Petitioner notes that an application is pending for use of Channel 276A at Rural Retreat but states that no authorization has been granted (BPH-890420MK). However, on January 26, 1990, just prior to the filing of petitioner's request, the Commission granted the application of Highland Broadcasting, Inc. and issued a construction permit for Station WCRR-FM. Therefore, the permittee of Station WCRR-FM must be afforded an opportunity to show cause why its construction permit should not be modified as specified herein. Further, should the channel substitution ultimately be adopted, Highland Broadcasting is entitled to reimbursement for the reasonable costs involved in the change of its operating channel. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Since the petitioner was unaware that the construction permit had been granted, he stated no such reimbursement intention. Therefore, he is requested to state such an intention in comments. This reimbursement statement is also expected of any other interested party for Channel 278A at Marion, or any counterproponent whose proposal would likewise require the Rural Retreat substitution. See *Dennis Port and Harwich Port, Massachusetts*, 2 FCC Rcd 6793 (1987), 4 FCC Rcd 7129 (1989). Failure to provide such a commitment could result in a denial of the proposal. See *Brookville and Punxsutawney, Pennsylvania*, 3 FCC Rcd 5555 (1988).

3. We believe the public interest would be served by proposing the allotment of Channel 278A to Marion, Virginia, since it could provide the community with an additional local FM service. Channel 278A can be allotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restric-

tion of 13.5 kilometers (8.4 miles) northeast to avoid a short-spacing to Station WIMZ-FM, Channel 278C, Knoxville, Tennessee. Channel 237A can be allotted to Rural Retreat in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station WCRR-FM's construction permit.¹

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Marion, Virginia	230C, 273A	230C, 273A, 278A
Rural Retreat, Virginia	276A	237A

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Highland Broadcasting, Inc., permittee of Station WCRR-FM, Rural Retreat, Virginia, SHALL SHOW CAUSE why its construction permit SHOULD NOT BE MODIFIED to specify operation on Channel 237A as proposed herein instead of the present Channel 276A.

6. Pursuant to Section 1.87 of the Commission's Rules, Highland Broadcasting, Inc. may, not later than **November 5, 1990**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Highland Broadcasting, Inc. to furnish additional information. If Highland Broadcasting, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Highland Broadcasting, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order to Show Cause* to Station WCRR-FM, as follows: Highland Broadcasting Inc., P.O. Box 700, Rural Retreat, Virginia 24368.

8. 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.

9. Interested parties may file comments on or before **November 5, 1990**, and reply comments on or before **November 20, 1990**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James K. Cornick
 P.O. Box 85
 Marion, Virginia 24354
 (Petitioner)

10. 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. *See Certification that Sections 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.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. 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 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

Kathleen B. Levitz
 Deputy Chief
 Policy and Rules Division
 Mass Media Bureau

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 Procedures.* 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 proposal(s) 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* Section 1.420(a), (b) and (c) of the Commission's Rules.)

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 Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

¹ The coordinates for Channel 278A at Marion, Virginia, are North Latitude 36-54-28 and West Longitude 81-23-25. The coordinates for Channel 237A at Rural Retreat, Virginia, are North Latitude 36-54-15 and West Longitude 81-10-51.