

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

MM Docket No. 90-325

In the Matter of

Amendment of Section 73.202(b), RM-7212
Table of Allotments, RM-7347
FM Broadcast Stations.
(Americus, Fort Valley, and
Smithville, Georgia)

NOTICE OF PROPOSED RULE MAKING AND
ORDER TO SHOW CAUSE

Adopted: June 20, 1990;

Released: July 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration are two separately filed and mutually exclusive petitions for rule making. The first proposal, filed by S & M Broadcasters, Inc. ("S & M"), requests the substitution of Channel 250C3 for Channel 250A at Fort Valley, Georgia, and the modification of its construction permit for Station WKXK(FM) to specify operation on the higher class channel.¹ In order to accomplish the upgrade, S&M also requests the substitution of Channel 254A for Channel 249A at Americus, Georgia, currently licensed to Station WPUR(FM), and modification of that station's license to specify operation on the new Class A channel. The second proposal, filed by Smithville Radio Company ("Smithville"), requests the allotment of Channel 254C3 to Smithville, Georgia, as that community's first local broadcast service. The respective proponents stated their intentions to apply for the channels, if allotted.

2. In support of its proposal, Smithville asserts that Channel 254C3 would provide a first local radio service for the city of Smithville and a second fulltime local aural service for Lee County because Leesburg, Georgia, has a Class A assignment. Smithville adds that its proposal would also provide the area with its first Class C3 assignment.

3. An engineering analysis reveals that Channel 254C3 can be allotted to Smithville, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction 4.4 kilometers (2.8 miles) north,² in order to avoid a short-spacing to the application (BPH-891604IC) of Station WBGFM-FM, Channel 255C1, Tallahassee, Florida, to change its transmitter site.

4. Likewise, Channel 250C3 can be allotted to Fort Valley in compliance with the Commission's minimum distance separation requirements with a site restriction 13.9 kilometers (8.6 miles) east,³ if the channel substitution at Americus is accomplished. The site restriction is needed to avoid a short-spacing to Station WKEU-FM Channel 249A, Griffin, Georgia, and the proposed upgrade of Station WSKS(FM), Sparta, Georgia, from Channel 249A to Channel 249C3. Channel 254A can be

allotted to Americus in compliance with the Commission's minimum distance separation requirements and can be used at Station WPUR(FM)'s present transmitter site.⁴ Therefore, we are herein issuing an *Order to Show Cause* to Sumter Broadcasting Co., Inc., the licensee of Station WPUR(FM), Americus, Georgia, seeking comments as to why its license should not be modified to specify operation on Channel 254A in lieu of Channel 249A.

5. Commission policy requires that the petitioner reimburse Station WPUR(FM) for the reasonable costs of changing its frequency. See *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). Consistent with this policy, S&M is requested to state, in its comments to the *Notice*, its willingness to reimburse Station WPUR for the reasonable costs in changing its channel. Failure to provide such a commitment could result in a denial of the proposal. See, e.g., *York, Alabama*, 3 FCC Rcd 4241 (1988).

6. We believe the public interest would be served by seeking comments on the allotment of Channel 254C3 to Smithville, Georgia, as the community's first local broadcast service or the upgrade of Station WKXK(FM)'s construction permit from Channel 250A to Channel 250C3 at Fort Valley. Consequently, we are providing the proponents with an opportunity to demonstrate why their respective proposals should be preferred. The parties should be guided by the criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). We note that the Smithville proposal is seeking a first local broadcast service, while S & M's proposal seeks to upgrade an existing facility. In this regard, a first local service (priority three) is generally preferred over an upgrade of an existing station (priority four).

7. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
OPTION I		
Americus, Georgia Fort Valley, Georgia	232A, 249A	232A, 254A
	250A, 292C2	250C3, 292C2
OPTION II		
Smithville, Georgia	--	254C3

8. If we find that Option I would better serve the public interest, we would, as requested, modify the construction permit for Station WKXK(FM) at Fort Valley to specify operation on Channel 250C3 and modify the license for Station WPUR(FM) to specify the new Class A channel. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest for use of Channel 250C3 at Fort Valley or Channel 254A at Americus or require S & M to demonstrate the availability of an additional equivalent class channel for use by such parties.

9. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Sumter Broadcasting Co., Inc., licensee of Station WPUR(FM),

Channel 249A, Americus, Georgia, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 254A in lieu of Channel 249A.

10. Pursuant to Section 1.87 of the Commission's Rules, Sumter Broadcasting Co., Inc., may, not later than August 24, 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 Sumter Broadcasting Co., Inc., to furnish additional information. If Sumter Broadcasting Co., 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, Sumter Broadcasting Co., 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.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Sumter Broadcasting Co., Inc.
P.O. Box 727
Americus, Georgia 31709

12. 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.

13. Interested parties may file comments on or before August 24, 1990, and reply comments on or before September 10, 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 consultants, as follows:

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(Counsel for S&M
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Jerry E. White
Cindy M. White
D/B/A Smithville Radio
Company
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Meigs, Georgia 31765
(Petitioners for Smithville,
Georgia)

14. 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.

15. For further information concerning this proceeding, contact Nancy J. Walls, 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 com-

ments 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.

FOOTNOTES

¹ S & M also owns daytime-only Station WKKO(AM), Fort Valley, Georgia.

² The coordinates for Channel 254C3 at Smithville are North Latitude 31-56-23 and West Longitude 84-15-37.

³ The coordinates for Channel 250C3 at Fort Valley are North Latitude 32-33-20 and West Longitude 83-44-14.

⁴ The coordinates for Channel 254A at Americus are North Latitude 32-04-51 and West Longitude 84-15-20.