

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

MM Docket No. 90-326

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Brunswick and Waycross,
Georgia) RM-7179

NOTICE OF PROPOSED RULE MAKING

Adopted: June 20, 1990; Released: July 5, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Rowland Radio, Inc. (petitioner), licensee of Station WBGA(FM), Channel 273C1, Waycross, Georgia, (population 19,371).¹ Petitioner requests the reallocation of its channel to Brunswick, Georgia (population 17,605) and the modification of its license.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules.² In this regard, petitioner states that the requested change in the community of license to Brunswick is mutually exclusive with the allotment of Channel 273C1 at Waycross. This is due to the fact that the distance between Brunswick and Waycross at Station WBGA's existing tower site is 45 kilometers, whereas a distance of 245 kilometers is required by Section 73.207(c) of the Commission's Rules between Class C1 co-channels. In addition, petitioner notes that no change in Station WBGA's transmitter site is requested and that, from its existing site, WBGA will be able to provide a city-grade signal to the entire community of Brunswick. Petitioner adds that both communities are served by other fulltime facilities. Waycross presently has two fulltime AM stations, three commercial FM stations, one educational FM station, and one full service TV station. The city of Brunswick, Georgia, has two fulltime AM stations, one daytime-only AM station, two FM stations, and one TV station licensed to it.

3. An engineering analysis reveals that Channel 273C1 can be allotted to Brunswick in compliance with the minimum distance separation requirements with a site restriction 44.8 kilometers (27.9 miles) west,³ in order to avoid a short-spacing to Station WIVY(FM), Channel 275C, Jacksonville, Florida.

4. We believe the proposal warrants consideration. The proposal would not deprive Waycross of its only local broadcast service, and its use is mutually exclusive with Brunswick. However, based on the information submitted, it is not clear that the proposed reallocation would necessarily result in a preferential arrangement of radio facilities pursuant to the *Report and Order* in MM Docket No. 88-526.⁴ In this regard, we note that this proposal would

result in the slightly larger community of Waycross (pop. 19,371) having five aural facilities while the smaller community of Brunswick (pop. 17,605) would have six radio stations.⁵ Under these circumstances, petitioner is requested to provide additional information on the question of whether this proposal would result in a preferential arrangement of FM allotments. Specifically, the petitioner should submit information concerning the other public interest factors normally considered under our allotment priorities where no first or second aural or first local service is at issue, such as location, city size, and the availability of reception services. As requested, we shall propose to modify the license of Station WBGA(FM) to change the community of license and specify operation on Channel 273C1 at Brunswick, Georgia. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for use of Channel 273C1 at Brunswick or require the petitioner to demonstrate the availability of an additional equivalent class channel at Brunswick.

5. Accordingly, we seek comments on the proposal 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
Brunswick, Georgia	264C1, 268C	264C1, 268C, 273C1
Waycross, Georgia	249A, 273C1, 277C	249A, 277C,

6. 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.

7. 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:

Peter Gutmann
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D. C. 20006
(Attorney for Rowland Radio, Inc.)

8. 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.

9. 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 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.

FOOTNOTES

¹ Population figures are taken from the 1980 U.S. Census.

² See *Report and Order*, MM Docket No. 88-526, 4 FCC Rcd 4870 (1989).

³ The coordinates for Channel 273C1 at Brunswick are North Latitude 31-09-13 and West Longitude 81-58-00.

⁴ See *supra* note 2.

⁵ Although we have, in the past, excluded noncommercial educational stations in considering the number of local aural transmission services under our FM assignment criteria, we have included the noncommercial educational FM station licensed to Waycross in view of the Commission's recent decision in *Valley Broadcasters, Inc.*, FCC 90-147, released April 27, 1990. In *Valley Broadcasters*, the Commission reversed *Kaldor Communications, Inc.*, 98 FCC 2d 292, 294 n.4 (Rev. Bd. 1984) and held that the existence of noncommercial educational stations should be considered for purposes of applying Section 307(b) of the Communications Act and determining the number of local transmission services.