

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 96-195
Table of Allotments,	)	RM-8867
FM Broadcast Stations.	)	
(Geneseo, Illinois and DeWitt, Iowa)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1996;      Released: September 20, 1996

Comment Date: November 12, 1996  
Reply Comment Date: November 27, 1996

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Connoisseur Communications of Quad Cities, L.P. ("petitioner"), licensee of Station WGEN-FM, Channel 285A, Geneseo, Illinois, proposing the substitution of Channel 285C3 for Channel 285A at Geneseo, the reallocation of Channel 285C3 from Geneseo to DeWitt, Iowa, and the modification of Station WGEN-FM's license accordingly. Petitioner states its intention to apply for Channel 285C3, if reallocated to DeWitt.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that DeWitt is an incorporated community with a population of 4,514,<sup>1</sup> and is located in Clinton County (population 51,040). Petitioner also states that DeWitt has an elected mayor and city council. It has its own community hospital, fire department, police department, water plant, trash disposal plant, library, and community center. In addition, DeWitt has a variety of retail stores, restaurants, service stations, banks, schools, churches, and community organizations, and is also served by a bi-weekly newspaper.

<sup>1</sup>All population figures are taken from the 1990 U.S. Census.

3. Pursuant to the Commission's policies, petitioner contends that the proposed reallocation and upgrade would result in a preferential arrangement of allotments since it would provide a first local aural transmission service to DeWitt, and would encourage the maximization of broadcast facilities, citing Change of Community R&O and MO&O, supra. Petitioner further contends that the proposal would result in a significant net gain to an area of 2,963 square kilometers (1,144 square miles) with a population of 196,097. Specifically, petitioner alleges that the net gain in area and population is based upon a total gain of 3,728 square kilometers (1,439 square miles) with a population of 208,841, and a total loss of 765 square kilometers (295 square miles) with a population of 12,744. Petitioner states that neither Geneseo, Illinois nor DeWitt, Iowa, is located within an urbanized area. However, the Commission's recent policy requires that proponents seeking to relocate to a community adjacent to an urbanized area that would place a 70 dBu signal over 50% or more of the urbanized area, submit a Tuck analysis. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).<sup>2</sup> Although DeWitt is near the Davenport-Rock Island-Moline, Iowa-Illinois Urbanized Area, petitioner claims that a Tuck analysis is not applicable, and our engineering analysis has confirmed that the reallocation of Channel 285C3 to DeWitt would provide a 70 dBu signal over only approximately 45% of the Urbanized Area. Moreover, petitioner asserts that the reallocation to DeWitt would not deprive Geneseo (population 5,990) of its sole local service since Station WGEN(AM), a daytime-only service, would remain licensed to the community. Petitioner further asserts that Station WGEN-FM would continue to provide primary service (1.0 mV/m) to Geneseo, which already receives five or more reception services.

4. We believe petitioner's proposal warrants consideration since the upgrade and reallocation to DeWitt, Iowa, could provide the community with its first local aural transmission, and enable Station WGEN(FM) to expand its FM service area. However, since petitioner proposes to relocate its transmitter site, the reallocation would result in some areas losing existing reception services.<sup>3</sup> Therefore, although the petitioner has provided some gain and loss data, it is requested to provide additional data reflecting the total reception services that are

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<sup>2</sup>See also Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>3</sup>The Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, supra, at 5 FCC Rcd 7097.

presently available in the gain and loss areas.<sup>4</sup> Petitioner is also requested to submit information demonstrating the overall public interest benefits that would be derived from the reallocation.

5. An engineering analysis has determined that Channel 285C3 can be allotted to DeWitt, Iowa, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) southeast to avoid short-spacings to the licensed sites of Station WXRX(FM), Channel 285A, Belvidere, Illinois, and Station WXCL(FM), Channel 285A, Pekin, Illinois, at petitioner's requested site.<sup>5</sup> In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 285C3 at DeWitt, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. 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 communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Geneseo, Illinois	285A	—
DeWitt, Iowa	—	285C3

7. 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.

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<sup>4</sup>Reception services are those aural broadcast service that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, one considers the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station exception Class C. For Class C stations, one uses the minimum or existing Class C facilities, whichever is greater. The area of reception service for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class AM station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served.

<sup>5</sup>The coordinates for Channel 285C3 at DeWitt are North Latitude 41-42-50 and West Longitude 90-27-20.

8. Interested parties may file comments on or before November 12, 1996, and reply comments on or before November 27, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John C. Trent, Esq.  
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(Counsel for Petitioner)

9. 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.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (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 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

Andrew J. Rhodes  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 96-195  
RM-8867

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. 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.) 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 Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.