

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cordele, Hawkinsville and Montezuma,
Georgia)

MM Docket No. 99-199
RM-9564

; Released: May 28, 1999

Reply Comment Date: August 3, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Metro Com Corp, licensee of Station WKKN(FM), Cordele, Georgia, Broadcast Equities Corp., permittee of a new station at Montezuma, Georgia (BPH-970925NH), and Tri-County Broadcasting Company, licensee of Station WQSY(FM), Hawkinsville, Georgia ("Metro Com, " "Broadcast Equities," "Tri-County" or "petitioners"). Petitioners request the substitution of Channel 236C3 for Channel 252A at Cordele, the modification of Station WKKN's license to specify the higher class channel, the substitution of Channel 280C3 for Channel 236A at Montezuma, the modification of Broadcast Equities construction permit to specify the higher class channel and the substitution of Channel 252C3 for Channel 280C3 at Hawkinsville and the modification of Station WQSY's license to specify the alternate Class C3 channel. The petitioners state their intention to promptly apply for their respective channels, if allotted.¹

2. In support of the proposal, petitioners assert that the public interest would be served by the upgrading of both Station WKKN at Cordele and the proposed new station at Montezuma from their present Class A channels to the proposed Class C3 channels. According to the petitioners, the grant of their proposal will enable Station WKKN to increase the population it serves from its present 23,035 persons to 70,186 persons and the future Montezuma station to provide service to 74,978 persons from its presently estimated 11,236 persons, for a total increase in population served of 107,038 persons. Petitioners also note that the substitution of channels at Hawkinsville will result in Station WQSY serving 65,548 persons instead of its present 69,403

¹ According to the petition, the three petitioners are commonly owned by 100% stockholder James Popwell, Sr. Nevertheless, Metro Com and Broadcast Equities state their commitment to reimburse Tri-County for the reasonable and prudent expenses that may be incurred in changing its licensed channel.

persons, or a loss of service to 3,955 persons. Petitioners recognize that the proposed allotments at both Cordele and Montezuma are to non-adjacent higher class channels. However, they state that the proposal constitutes an incompatible channel swap and thus each of the station's authorizations can be modified in rule making pursuant to Section 1.420(g)(3) of the Commission's Rules without accepting competing expressions of interest.

3. We believe the proposal advanced by the petitioners warrants consideration since the allotment of Channels 236C3 at Cordele and 280C3 at Montezuma could provide each community with a wide coverage area FM service and enable the stations to provide service to a greater number of people. Further, a staff engineering study has confirmed that the proposal does constitute an incompatible channel swap in that the proposed channels are the only Class C3 channels which can be allotted to each community. Therefore, we also propose to modify the licenses of Stations WKKN and WQSY at Cordele and Hawkinsville, respectively, and the construction permit for the new station at Montezuma without requiring the petitioners to specify an additional equivalent class channel for use by other interested parties or to accept competing expressions of interest in use of the channels as proposed herein. However, in light of the fact that the substitution of channels at Hawkinsville will result in a loss of service to 3,955 persons, we request that the petitioners provide a study showing the reception services which will remain in the loss area if Channel 252C3 is substituted for Channel 280C3.

Technical Summary

4. Channel 236C3 can be allotted to Cordele in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 kilometers (12.8 miles) northwest. Channel 252C3 can be allotted to Hawkinsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) east. Channel 280C3 can be allotted to Montezuma in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) east.² Each of the site restrictions is required to accommodate the desired transmitter site of the petitioners.

5. 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:

² The coordinates for Channel 236C3 at Cordele are 32-06-24 North Latitude and 83-55-39 West Longitude. The coordinates for Channel 252C3 at Hawkinsville are 32-16-51 NL; 83-27-02 WL. The coordinates for Channel 280C3 at Montezuma are 32-14-46 NL; 83-49-01 WL.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Cordele, Georgia	252A	236C3
Hawkinsville, Georgia	280C3	252C3
Montezuma, Georgia	236A	280C3

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 July 19, 1999, and reply comments on or before August 3, 1999, 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:

Dan J. Albert
2120 N. 21st Road
Arlington, VA 22201
(Counsel to petitioner)

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 Leslie K. Shapiro, 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

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

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 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.