

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-140
Table of Allotments,)	RM-10697
FM Broadcast Stations.)	
(Avoca, Freeland and)	
Wilkes-Barre, Pennsylvania))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 2003

Released: June 23, 2003

Comment Date: August 14, 2003

Reply Comment Date: August 29, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Entercom Wilkes-Barre Scranton, LLC (“Entercom”), licensee of Station WAMT, Channel 276A, Freeland, Pennsylvania, and Station WKRZ, Channel 253B, Wilkes-Barre, Pennsylvania, requesting changes to the FM Table of Allotments. Entercom requests the reallocation of Channel 276A from Freeland to Avoca, Pennsylvania, and the reallocation of Channel 253B from Wilkes-Barre to Freeland, Pennsylvania, as a replacement service for Channel 276A at Freeland. Entercom states its intention to file applications for the channels at Avoca and Freeland if its proposal is granted.

2. Entercom has requested to change the community of license for Station WAMT, Freeland, Pennsylvania, and for Station WKRZ, Wilkes-Barre, Pennsylvania, in accordance with the provisions of Section 1.420(i) of the Commission’s Rules which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Entercom states that each allotment is mutually exclusive with the existing allotment, its proposal results in a preferred arrangement of allotments under the Commission’s priorities and local service will be retained in each community.² The reallocation of Channel 276A from Freeland to Avoca (population 2,851 people) would not deprive Freeland (population of 3,909 people) of its sole local transmission outlet, because Freeland would retain local service with the reallocation of Channel 253B from Wilkes-Barre to Freeland and modification of the license for Station WKRZ to specify operation at Freeland. Wilkes-Barre will continue to be the community of license for Stations WMGS(FM), WILK(AM), and WBAX(AM). Entercom states that Station WAMT operating on Channel 276A at Avoca, will place a 70 dBu contour over 55 percent of the Scranton Urbanized Area from the proposed transmitter

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² See *Revision of FM Assignment Policies and Procedures (“FM Allotment Priorities”)*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

site. The WAMT community of license is proposed to be modified from Freeland, located within the Hazleton Urbanized Area, to Avoca, located within the Scranton Urbanized Area. Entercom has provided information showing that Avoca is an independent community, utilizing the *Tuck* factors.³ Entercom states that the relocation of Station WAMT to Avoca will bring aural service to a total of 311,168 persons without creating any white or gray areas. The reallocation of Channel 276A from Freeland to Avoca will not deprive Freeland of local service as the community will continue to be served by the reallocation of Station KKRZ, Channel 253B, from Wilkes-Barre to Freeland. Entercom points out that Station WKRZ will continue to operate at its current site consistent with Commission precedent allowing community of license changes by grandfathered short-spaced stations where no change in transmitter site is proposed, no new short-spacings created and no existing short-spacings exacerbated. Therefore, there will be no loss or gain in the service area for Station WKRZ. In addition, Entercom states that the WKRZ community of license is proposed to be modified from Wilkes-Barre, located within the Scranton Urbanized Area, to Freeland, located within the Hazleton Urbanized Area. Station WKRZ currently provides service to 79 percent of the Scranton Urbanized Area and 94 percent of the Hazleton Urbanized Area and no change of transmitter site is proposed, Station WKRZ will continue to provide service to both urbanized areas.

3. The reallocation proposal submitted by Entercom is consistent with the provisions of Section 1.420(i) of the Commission's Rules. We shall propose to modify the authorization of Station WAMT to specify operation on Channel 276A at Avoca, Pennsylvania, in lieu of Channel 276A at Freeland, Pennsylvania. We shall also propose the modification of the license for Station WKRZ, Wilkes-Barre, Pennsylvania, to specify operation on Channel 253B at Freeland, Pennsylvania. We will not entertain competing expressions of interest in the use of these channels. A staff engineering analysis confirms that the proposed allotments can be made in compliance with the Commission's spacing requirements.⁴ A staff engineering analysis indicates that the reallocation of Channel 276A from Freeland to Avoca will result in a loss of service to 140,673 people with a gain in service to 305,737 people with both the loss and gain areas having five or more services. We further show that the proposed allotment at Avoca will cover 52 percent of the Scranton Urbanized Area. Since Station WAMT, Freeland, is located within the Hazleton Urbanized Area and is relocating to Avoca, located in the Scranton Urbanized Area, Station WAMT is not relocating from a rural to an urban area, as the station is already located in an urban area. Entercom has provided a *Tuck* showing establishing independence of Avoca from the Scranton Urbanized Area. Station WKRZ at Freeland will continue to provide service to 79 percent of the Scranton Urbanized Area and 94 percent of the Hazleton Urbanized Area since there will be no relocation of its transmitter. Therefore, the proposed relocations do not implicate the Commission's policy concerning the potential migration of stations from underserved rural areas to well-served urban areas as the stations are currently serving urbanized areas.⁵ Our staff analysis confirms that Station WKRZ, Wilkes-Barre is a grandfathered short-spaced station. Consistent with our policy, since no change in transmitter site is requested, we believe that Station WKRZ should be afforded the opportunity to change its community of license.⁶ Entercom will be required to specify its current licensed site for Station WKRZ, Wilkes-Barre,

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). (Eight factor analysis for determining a proposed community's independence from a nearby urbanized area.)

⁴ The coordinates for Channel 276A at Avoca, Pennsylvania, are 41-18-20 and 75-45-38. The coordinates for Channel 253B at Freeland, Pennsylvania, are 41-11-56 and 75-49-06.

⁵ See *Elizabeth City, North Carolina and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).

⁶ See *Shelbyville and LaVergne, Tennessee*, 16 FCC Rcd 16331 (M.M.B. 2002), *Oceanside and Encinitas, California*, 14 FCC Rcd 15032 (M.M.B. 1999) and *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307

for the applications for a construction permit and a license for Station WKRZ, Freeland. Since the communities of Avoca and Freeland, Pennsylvania, are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for these allotments.

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

	<u>Channel Nos.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Avoca, Pennsylvania	-----	276A
Freeland, Pennsylvania	276A	253B
Wilkes-Barre, Pennsylvania	225B, 253B	225B

5. 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.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 14, 2003**, and reply comments on or before **August 29, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner's counsel, as follows:

Brian M. Madden
 John W. Bagwell
 Leventhal Senter & Lerman PLLC
 2000 K Street, NW, Suite 600
 Washington, D. C. 20006-1809

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings

(M.M.B. 1992).

must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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.⁷

9. For further information concerning this proceeding, contact Kathleen Scheuerle, 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 that 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
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained 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 discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent 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 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 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 Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.