

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-51
Table of Allotments,)	RM-10555
FM Broadcast Stations.)	
(Dickson and Pegram, Tennessee))	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 26, 2003

Released: March 4, 2003

Comment Date: April 25, 2003

Reply Date: May 12, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Montgomery Broadcasting Company (“Petitioner”), licensee of Station WQZQ-FM, Dickson, Tennessee. Pursuant to Section 1.420(i) of the Commission’s Rules, Petitioner proposes to change the community of license for Station WQZQ-FM from Dickson to Pegram, Tennessee, and to change the FM Table of Allotments by deleting Channel 273C1 at Dickson, Tennessee, and by adding Channel 273C1 at Pegram, Tennessee as the community’s first local aural broadcast service. In addition to WQZQ-FM, two additional broadcast stations currently are licensed to Dickson: A daytime AM station, WDKN-AM, and a noncommercial FM station, WNRZ-FM. Petitioner represents that if its request is granted, it will file an application for Channel 273C1 at Pegram, Tennessee, and when authorized will modify the facilities promptly and commence operation on Channel 273C1 at Pegram.

2. Petitioner proposes to change the community of license for Station WQZQ-FM from Dickson to Pegram under the guidelines set forth in *Modification of FM and TV Authorizations to Specify a New Community of License*.¹ That decision establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² Petitioner states that the provision of a first local service at Pegram (Priority 3) should be preferred over the retention of multiple local services at Dickson (Priority 4).

3. In further support of its proposal, Petitioner states that Pegram is an incorporated place with a

¹ 4 FCC Rcd 4870 (1989), *recon.granted in part.*, 5 FCC Rcd 7094 (1990).

² 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

population of 2,146 persons, and that Pegram is self-governing with its own mayor, fire department, planning commission, and other city governmental officials and offices. Staff engineering analysis concludes that Petitioner’s proposal is technically feasible and that Channel 273C1 can be allotted to Pegram, Tennessee, at the proposed coordinates, consistent with the minimum distance separation requirements of the Commission’s Rules. Staff analysis also shows that the change of community from Dickson to Pegram would result in a loss area containing 17,616 persons and a gain area containing 4,275 persons, for a net loss of 13,341 persons. There would be no net gain nor loss in the land area served, because the loss and gain area each cover 260 square kilometers. Both the loss area of Channel 273C1 at Dickson and the gain area of Channel 273C1 at Pegram are completely covered by at least five other full-time services, and thus, all areas potentially affected by this proposal would continue to be well-served.

4. Neither Dickson nor Pegram is located within an urbanized area. The existing 70 dBu signal for WQZQ-FM at Dickson covers 100 percent of the Clarksville, Tennessee-Kentucky Urbanized Area and 25.2 percent of the Nashville-Davidson, Tennessee Urbanized Area. The 70 dBu contour of the proposed Channel 273C1 facility at Pegram would cover 100 percent of the Clarksville, Tennessee-Kentucky Urbanized Area and 20.3 percent of the Nashville-Davidson, Tennessee Urbanized Area. Under these circumstances, no *Tuck* analysis will be necessary to evaluate this change of community proposal.³

5. This proposal warrants consideration because the proposed allotment would provide Pegram with a first commercial broadcast transmission service. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, with respect to Dickson and Pegram, Tennessee.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Dickson, Tennessee	273C1	---
Pegram, Tennessee	---	273C1

Proposed Coordinates for Channel 273C1 at Pegram, Tennessee: 36-17-50 NL and 87-19-31 WL, with a site restriction of 32.9 km (20.5 miles) northwest of Pegram.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules.⁴ 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 in paragraph 2 of the Appendix before a channel will be allotted.

³ See *Faye and Richard Tuck*, 3 FCC Red 5374 (1988), and *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Red 10,352 (1995).

⁴ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission’s Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **April 25, 2003**, and reply comments on or before **May 12, 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, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the petitioner, as follows:

John F. Garziglia
Mark Blacknell
Womble, Carlyle, Sandridge & Rice, PLLC
1776 K Street, N.W. – Suite 200
Washington, D.C. 20036

8. 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. An 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, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. 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 in the applicable docket 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket 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 this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

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 (TV) Table of Allotments, Section 73.202(b) (73.606(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. The 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(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 Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.