

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

MM Docket No. 88-596

In the Matter of

Amendment of Section 73.202(b), RM-6430
Table of Allotments,
FM Broadcast Stations.
(Austin-Crothersville, Indiana)

stricted site approximately 7.6 kilometers (4.7 miles) east³ of the community, in each instance to avoid short-spacing to Station WQRK(FM), Channel 288A, Bedford, Indiana.⁴

5. In view of the above, the Commission believes it is appropriate to 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 communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Austin, Indiana	--	287A
	OR	
Crothersville, Indiana	--	287A

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Jacksy Radio Association (petitioner) proposing the allotment of FM Channel 287A on a hyphenated basis to the communities of Austin-Crothersville, Indiana, as a first local broadcast service. Petitioner stated its intent to apply for the channel if allotted.

2. Hyphenation is an allotment tool which we have used very sparingly. In the past, we have done so only where it appeared that the communities should be treated as one due to their nearness and mutual economic, trade, cultural and social interests. See *Eagle Nest and Angel Fire, New Mexico*, 3 FCC Rcd 2520 (1988). Austin (population 4,857),¹ in Scott County (population 20,600) and Crothersville (population 1,747), in Jackson County (population 37,300), are located 6.4 kilometers (3.4 miles) apart. According to the *Rand McNally Commercial Atlas and Marketing Guide* (1988 Ed.), both Austin and Crothersville are incorporated communities, which have their own post office and financial institutions. However, petitioner has not provided sufficient information to demonstrate that Austin and Crothersville should be treated as one community by reason of their proximity and common social, cultural, trade and economic interests. Therefore, if petitioner wishes to pursue a hyphenated allotment, it must submit additional information regarding Austin and Crothersville to demonstrate that the communities are so interdependent that such an allotment is required. In the absence of such justification, we would favor the allotment of Channel 287A to Austin since it is the larger community.

3. Petitioner should also note that if its intent is to have its proposed station identify with both Austin and Crothersville, then, it may include both communities in the station's official identification.

4. We believe that petitioner's proposal to provide Austin and Crothersville with their first local service warrant further consideration. A staff engineering analysis has determined that Channel 287A can be allotted to Austin in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is located at least 3.4 kilometers (2.1 miles) east,² or to Crothersville at a re-

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 **March 16, 1989** and reply comments on or before **March 31, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Jacksy Radio Association
5125 West Tenth Street
Indianapolis, Indiana 46227

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 Joynor, 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

Steve Kaminer
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 used herein were supplied by the petitioner, as reported in the 1980 U.S. Census.

² Reference coordinates used in this determination are 38-44-15 and 85-46-14.

³ Reference coordinates at the restricted site for Channel 287A are 38-47-00 and 85-45-17.

⁴ Reference coordinates at the licensed site of Station WQRK(FM) are 38-54-29 and 86-28-28.