

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

MM Docket No. 88-613

In the Matter of

Amendment of Section 73.202(b), RM-6483
Table of Allotments,
FM Broadcast Stations.
(Dickson, Tennessee and
Benton, Kentucky)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by American Communications, Inc. (petitioner), licensee of Station WQZQ(FM), Channel 273C2, Dickson, Tennessee, proposing the substitution of Channel 273C1 for Channel 273C2 at Dickson and modification of its license accordingly. In order to permit the substitution of Channel 273C1 at Dickson, petitioner suggested that Channel 256A be substituted for Channel 272A at Benton, Kentucky, and the license of Station WCBL-FM be modified to specify operation on the new Class A channel.

2. A staff engineering analysis reveals that Channel 273C1 can be allotted to Dickson in compliance with the Commission's minimum distance separation requirements with a site restriction, if the channel substitution is accomplished at Benton. Petitioner specified a site 14.4 kilometers (9.0 miles) north of the city, which will avoid a short spacing to Station WYCQ(FM), Channel 275C1 at Shelbyville, Tennessee.¹

3. As requested, we shall propose to modify the license of Station WQZQ(FM) to specify operation on Channel 273C1. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Dickson.

4. We are issuing a *Show Cause Order* to Purchase Broadcasting Co., licensee of Station WCBL-FM at Benton, Kentucky, seeking comments as to why its license should not be modified to specify operation on Channel 256A in lieu of Channel 272A. Commission policy requires that Station WCBL-FM be reimbursed for the reasonable costs of changing its frequency. Petitioner has stated its willingness to reimburse Station WCBL-FM.

5. In view of the fact that Dickson, Tennessee, could receive expanded FM service the Commission believes it would be in the public interest 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 following communities:

City	Channel No.	
	Present	Proposed
Benton, Kentucky	272A	256A
Dickson, Tennessee	229A, 273C2	229A, 273C1

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Purchase Broadcasting Co., licensee of Station WCBL-FM, Channel 272A, Benton, Kentucky, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 256A in lieu of Channel 272A.

7. Pursuant to Section 1.87 of the Commission's Rules, Purchase Broadcasting Co., may, not later than **March 20, 1989**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Purchase Broadcasting Co., to furnish additional information. If Purchase Broadcasting Co., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Purchase Broadcasting Co., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Purchase Broadcasting, Co.
P. O. Box 387
Benton, Kentucky 42025

9. 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.

10. Interested parties may file comments on or before **March 20, 1989**, and reply comments on or before **April 4, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John L. Tierney, Esquire
Ann Bavender, Esquire
Tierney & Swift
1200 18th Street, N.W.
Suite 210
Washington, D. C. 20036
(Counsels for petitioner)

11. 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.

12. For further information concerning this proceeding, contact Patricia Rawlings, 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.

FOOTNOTE

¹ The restricted site coordinates are 36-12-30 and 87-23-20.