

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

MM Docket No. 88-608

In the Matter of

Amendment of Section 73.202(b), RM-6497
Table of Allotments,
FM Broadcast Stations.
(Goulds, Immokalee and LaBelle,
Florida)

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

Adopted: December 2, 1988; Released: January 31, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Hispanic American Radio Broadcasting Corporation (petitioner), proposing the substitution of Channel 252C for Channel 252A at Goulds, Florida, and the modification of its license for Station WTHM to specify operation on the higher powered channel. In order to accomplish the upgrade at Goulds, petitioner also requests the substitution of Channel 221A for Channel 252A at Immokalee, Florida, with the modification of Station WCOO(FM)'s license accordingly, and the substitution of Channel 223A for Channel 221A at LaBelle, Florida, with the modification of Station WKZY's license accordingly. Petitioner states that it will apply for Channel 252C if allotted to Goulds. In addition, it states that it will reimburse the licensees of Stations WCOO(FM) and WKZY for the reasonable expenses incurred in their changes of channel.

2. All of the channel substitutions can be made in compliance with the Commission's minimum distance separation requirements and can be used at each station's present transmitter site.¹ As requested, we also propose to modify petitioner's license for Station WTHM to specify operation on Channel 252C in lieu of its present Channel 252A. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 252C at Goulds or require the petitioner to demonstrate the availability of an additional equivalent channel for their use.

3. We believe the public interest would be served by proposing the substitution of Channel 252C for Channel 252A at Goulds, the substitution of Channel 221A for Channel 252A at Immokalee, and the substitution of Channel 223A for Channel 221A at LaBelle, since it could enable Station WTHM to expand its coverage area. 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:

City	Present	Channel No. Proposed
Goulds, Florida	252A	252C
Immokalee, Florida	252A	221A
LaBelle, Florida	221A	223A

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, LaBelle Broadcasting, Inc., licensee of Station WKZY, Channel 221A, LaBelle, Florida, and Naples Radio, Inc., licensee of Station WCOO, Channel 252A, Immokalee, Florida, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channels 223A and 221A, respectively, as proposed herein.

5. Pursuant to Section 1.87 of the Commission's Rules, LaBelle Broadcasting and Naples Radio may, not later than March 24, 1989, file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on LaBelle Broadcasting and/or Naples Radio to furnish additional information. If LaBelle Broadcasting and/or Naples Radio 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, LaBelle Broadcasting and/or Naples Radio 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.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensees of Stations WKZY and WCOO, as follows: LaBelle Broadcasting, Inc., Station WKZY, P.O. Box 399, LaBelle, Florida 33935 and Naples Radio, Inc., Station WCOO, 810 12th Avenue South, Naples, Florida 33940.

7. 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.

8. Interested parties may file comments on or before March 24, 1989, and reply comments on or before April 10, 1989, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee W. Shubert, Esq.
David G. O'Neil, Esq.
Haley, Bader & Potts
2000 M Street, N.W., Suite 600
Washington, D.C. 20036-4574
(Counsel to petitioner)

9. 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.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, 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 coordinates for Channel 252C at Goulds are North Latitude 25-32-24 and West Longitude 80-28-07. The coordinates for Channel 221A at Immokalee are North Latitude 26-21-19 and West Longitude 81-21-03. The coordinates for Channel 223A at LaBelle are North Latitude 26-48-46 and West Longitude 81-21-16.