

Secretary's Office
Rm 222

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAR 12 3 21 AM '92

DISPATCHED BY

IN REPLY REFER TO:

James E. Shaw
President, Warrior Broadcasting, Inc.
3330 Main Avenue
P.O. Box 1020
Northport, AL 35476

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MAR 12 '92
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE
SECRETARY

Dear Mr. Shaw:

This is in response to your petition for rule making requesting the substitution of Channel 264C3 for Channel 264A at Northport, Alabama, and modification of the license for Station WLXY(FM) accordingly. In order to accommodate the substitution in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, you also request the deletion of Channel 263A at Macon, Mississippi, without replacement.

While recognizing that the Commission does not generally remove a community's only local aural transmission service, you express the belief that as approximately five years have elapsed since the construction permit for Station WMXG(FM) was granted, it is questionable whether the facility will ever be constructed. Moreover, you express doubt that the area economy could support a radio station at Macon considering the small size of the community. Rather, you believe the public interest would be served by deleting Channel 263A at Macon in order to ultimately provide an expanded service to Northport, Alabama, and its environs.

As you are aware, WMXG, Inc., holds the construction permit for Station WMXG(FM) (File No. BPH-890531JJ). The construction permit is afforded protection unless cancelled and, therefore, we cannot propose deletion of the channel at this time. If the frequency is ultimately vacated, the Commission would publicly announce the opening of a subsequent filing window to determine whether there may be any other interest in providing local aural transmission service in the community. See Houston and Thayer, MO, 6 FCC Rcd 4519 (1991). If such an interest is received, the channel would not be deleted absent countervailing public interest benefits, such as a demonstrated ability to provide a first or second aural transmission service as a result of deletion. Your claim that the market size and economic conditions in Macon are not conducive to supporting Station WMXG(FM) does not constitute a countervailing public interest benefit. See Policy Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd. 638 (1988), aff'd. 4 FCC Rcd 2276 (1989).

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Using the coordinates specified in your proposal (33-16-00 and 87-44-01), Channel 264C3 at Northport would be 11.5 kilometers short-spaced to the authorized site of Station WMXG(FM). Therefore, your proposal contravenes the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules and is unacceptable for consideration. Furthermore, we note that you failed to serve your proposal on WMXG, Inc., in violation of Section 1.401(d) of the Commission's Rules.

Therefore, we are returning your petition for rule making.

Sincerely,

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

NVJoyner/AB:PRD:MMB

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ltrs/ shaw

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