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

MM Docket No. 92-23

In the Matter of

Amendment of Section 73.202(b), RM-7900
Table of Allotments, RM-7989
FM Broadcast Stations.
(Hazard, Hyden, Jackson and
London, Kentucky)¹

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 22, 1993; Released: February 8, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 1372 (1992), issued in response to a petition for rule making filed by Ethel Huff ("Huff"), permittee of Station WYGE(FM), Channel 223A, London, Kentucky, requesting the substitution of Channel 223C3 for Channel 223A at London, and the modification of her construction permit (BPH-880817MH) to specify the higher class channel. In order to accomplish the upgrade at London, the *Notice* also proposed the substitution of Channel 223A for Channel 284A at Hazard, Kentucky, and the modification of Station WJMD(FM)'s license to specify Channel 223A; and the substitution of Channel 284A for Channel 222A at Hyden, Kentucky, and the modification of Station WZQQ(FM)'s license to specify Channel 284A. An *Order to Show Cause* was issued to Hazard Broadcasting Services, licensee of Station WJMD(FM), Channel 284A, Hazard, Kentucky, and Joey L. Dick, licensee of Station WZQQ(FM), Channel 222A, Hyden, Kentucky, directing the respective licensees to demonstrate why their license should not be modified to specify operation Channel 223A and Channel 284A, accordingly.

2. In response to the *Notice*, Huff filed a counterproposal requesting the substitution of Channel 222C2, rather than Channel 222C3, for Channel 223A at London, Kentucky, and the modification of her construction permit to specify operation on Channel 222C2. In order to accommodate this proposal, Huff also requested the substitution of Channel 250A for Channel 222A at Hyden, Kentucky, and the modification of Station WZQQ(FM)'s license to specify Channel 250A; and the substitution of Channel 293A for

Channel 249A at Jackson, Kentucky, and the modification of Station WJSN(FM)'s license to specify Channel 293A.² Hazard Broadcasting Services, licensee of Station WJMD(FM), Hazard, file opposing comments and reply comments.³ An *Order to Show Cause*, 7 FCC Rcd 6826 (1992), was issued to Intermountain Broadcasting Co., Inc. ("Intermountain"), licensee of Station WJSN(FM), Channel 249A, Jackson, Kentucky, directing the licensee to demonstrate why its license should not be modified to specify operation on Channel 293A in lieu of Channel 249A. Intermountain filed reply comments. Huff filed reply comments and comments restating her intention to apply for Channel 222C2, if allotted.

3. Huff in her counterproposal states that the substitution of Channel 222C2 for Channel 223A at London, would provide additional reception service to nearly a quarter million persons in more than an 8,500 square mile area, which represents an increase of 78% in area and 92% in population above those that would have resulted from the C3 upgrade. Huff also states that the Class A substitution will enable Station WJSN(FM), Jackson, and Station WZQQ(FM), Hyden, to operate as 6 kilowatt facilities. Huff states that she will reimburse the licensees of Stations WJSN(FM) and WZQQ(FM) for all reasonable costs in changing their channels as required by Commission policy.

4. The licensee of Station WZQQ(FM) filed no response to the *Order to Show Cause* why its license should not be modified. Accordingly, pursuant to Section 1.87 of the Commission's Rules, it is deemed to have consented to the channel change. Intermountain filed comments objecting to the channel substitution on the grounds that the change would result in costly technical changes and administrative expenses in changing frequencies.

5. In consideration of the above, we believe the public interest would be served by substituting Channel 222C2 for Channel 223A at London, Kentucky, since it could provide the community with a wide coverage area FM service. We believe the public interest would also be served by the substitution of Channel 250A for Channel 222A at Hyden, Kentucky, and the substitution of Channel 293A for Channel 249A at Jackson, Kentucky, to accommodate the London upgrade and to provide the communities of Hyden and Jackson, Kentucky, with expanded FM service. Channel 222C2 can be allotted to London in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) northwest,⁴ in order to avoid a short-spacing to Station WDEF(FM), Channel 222C, Chattanooga, Tennessee. Channel 250A can be allotted to Hyden in compliance with the Commission's minimum distance separation requirements at Station WZQQ(FM)'s current transmitter site,⁵ with a site restriction of 1.2 kilometers (0.8 miles) northwest. Channel 293A can be allotted to Jackson in compliance with the Commission's minimum distance separation requirements at Station WJSN(FM)'s current transmitter site,⁶ with a site restriction of 1.4 kilometers (0.9 miles) southwest.

¹ The community of Jackson, Kentucky, has been added to the caption.

² Public Notice of the counterproposal was given May 14, 1992, Report No. 1890 (RM-7989).

³ Huff's counterproposal does not contemplate changes at Hazard. The counterproposal has been accepted. Therefore, comments in reference to a Hazard, Kentucky, channel substitution

are now moot and will not be discussed.

⁴ The coordinates for Channel 222C2 at London are North Latitude 37-09-12 and West Longitude 84-06-56.

⁵ The coordinates for Channel 250A at Hyden are North Latitude 37-10-14 and West Longitude 83-22-49.

⁶ The coordinates for Channel 293A at Jackson are North Latitude 37-32-46 and West Longitude 83-23-42.

6. As for Intermountain's objections to the Jackson channel substitution, we note that Huff has stated that she will reimburse the licensees of Stations WJSN(FM) and WZQQ(FM) for all reasonable costs in changing their channels as required by Commission policy. We will require Huff to reimburse these licensees for the reasonable costs associated with changing frequencies consistent with the guidelines stated in *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967).

7. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WYGE(FM) to specify operation on Channel 222C2 at London, Kentucky. We are also modifying the license for Station WZQQ(FM) to specify operation on Channel 250A at Hyden, Kentucky, and the license for Station WJSN(FM) to specify operation on Channel 293A at Jackson, Kentucky.

8. Accordingly, pursuant to the 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 ORDERED, That effective **March 25, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Hyden, Kentucky	250A
Jackson, Kentucky	293A
London, Kentucky	222C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WYGE(FM), London, Kentucky, IS MODIFIED to specify operation on Channel 222C2 in lieu of Channel 223A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WYQQ(FM), Hyden, Kentucky, IS MODIFIED to specify operation on Channel 250A in lieu of Channel 222A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1260 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1260 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the require Communications Act of 1934, as amended, the license of Station WJSN(FM), Jackson, Kentucky, IS MODIFIED to specify operation on Channel 293A in lieu of Channel 249A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1260 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1260 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Ethel Huff, permittee of Station WYGE(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

13. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensees of Station WZQQ(FM), and Station WJSN(FM).

Joey L. Dick
P.O. Box 181
Stinnett, KY 40868
(Licensee of Station,
WZQQ(FM))

Intermountain
Broadcasting
Co., Inc.
1024 College Avenue
Jackson, KY 41339
(Licensee of Station
WJSN(FM))

14. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Ethel Huff, proposing the substitution of Channel 223C3 for Channel 223A at London, Kentucky, the substitution of Channel 223A for Channel 284A at Hazard, Kentucky; and the substitution of Channel 284A for Channel 222A at Hyden, Kentucky, IS DISMISSED (RM-7900).

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

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