

FCC MAIL SECTION

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

DISPATCHED BY

MM Docket No. 92-218

In the Matter of

Amendment of Section 73.202(b),	RM-8053
Table of Allotments,	RM-8054
FM Broadcast Stations.	RM-8143
(Olathe, Silver Lake and Topeka, Kansas) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 19, 1993; Released: March 17, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 6367 (1992), issued in response to two separately filed and mutually exclusive petitions for rule making. The first proposal, filed by Bott Broadcasting Company ("Bott"), requested substitution of Channel 222C3 for Channel 222A at Olathe, Kansas, and modification of its construction permit for Station KCCV-FM to specify operation on Channel 222C3.² To accommodate the upgrade at Olathe, Bott also requested the substitution of Channel 257A for Channel 223A at Topeka, Kansas (RM-8053). The second proposal, filed by Margaret Escriva ("Escriva"), permittee of Station KESC(FM), Topeka, Kansas, proposed the substitution of Channel 223C3 for Channel 223A at Topeka, Kansas, and modification of her construction permit accordingly (RM-8054). New Horizons Foundation, Incorporated ("New Horizons") filed a counterproposal.³ Bott and Escriva filed a joint settlement agreement and reply comments. After the close of the comment period, Escriva filed reply comments and New Horizons filed supplemental comments.⁴

2. New Horizons counterproposed the allotment of Channel 257A to Silver Lake, Kansas, as that community's first local service. New Horizons also requested reservation of the channel for noncommercial educational use. In support of its request, New Horizons states that Silver Lake is an incorporated community with a mayor-council form

of government. The community has a fire and police department and schools and has a 1990 population of 1,390. Further, New Horizons is a chartered nonprofit educational foundation that desires to provide traditional religious programming to the community. According to New Horizons, there are essentially no noncommercial educational channels available for allotment at Silver Lake because of the stations operating in the Kansas City, Missouri, and Topeka, Kansas, area. New Horizons states that it will file an application for Channel 257A at Silver Lake with or without reservation of the channel.

3. Bott and Escriva state that their settlement agreement would resolve the mutual exclusivity between Olathe and Topeka through a dismissal of Escriva's proposal (RM-8054).⁵ Escriva consents and agrees to the substitution of Channel 257A for Channel 223A at Topeka and modification of her construction permit accordingly. The substitution of channels at Topeka will allow Bott to upgrade Station KCCV-FM to the higher class channel.

4. In response to the counterproposal filed by New Horizons, Bott suggests that Channel 223A be allotted to Silver Lake at the city reference coordinates to accommodate its settlement with Escriva. It states that this solution would obviate the need for further litigation and would result in a first local service for Silver Lake and expanded service for Olathe. In their reply comments, Escriva and New Horizons support this suggestion. New Horizons states that it will apply for Channel 223A if allotted.

5. Based on the above information, we believe the public interest would be served by accepting the settlement agreement, substituting Channel 222C3 for Channel 222A at Olathe, Kansas and modifying Station KCCV-FM's construction permit accordingly. In addition, pursuant to the agreement, we will dismiss Escriva's proposal. A staff engineering analysis has determined that Channel 222C3 can be allotted to Olathe, Kansas, at petitioner's specified site.⁶ To accommodate the upgrade at Olathe, we shall substitute Channel 257A for Channel 223A at Topeka, Kansas, as agreed by Escriva and modify Escriva's construction permit for Channel 223A to specify operation on Channel 257A.⁷ We shall also allot Channel 223A to Silver Lake, Kansas, as that community's first local service. Channel 223A can be allotted to Silver Lake in compliance with the Commission's spacing requirements without a site restriction.⁸ We will not reserve the channel for noncommercial educational use as there is neither a TV Channel 6 interference problem nor a Canadian border problem. See *Siloam Springs, Arizona*, 2 FCC Rcd 7485 (1987). Further, a Commission engineering analysis indicates that reserved non-commercial Channel 206 is available for use at Silver Lake using reduced facilities.

¹ The community of Silver Lake, Kansas, has been added to the caption.

² An application for the assignment of the construction permit of Station KCCV-FM, Olathe, from Marianne S. Harbart to Bott Broadcasting Company was granted on July 1, 1992 (BAPH-920515HC). Ms. Harbart filed a statement consenting to the filing of the rule making petition.

³ Public Notice of the counterproposal was given on December 29, 1992, Report No. 1922 (RM-8143).

⁴ Because these comments support an agreement which resolves conflicting issues in this case, we believe acceptance is in the public interest. See Commission Rule 1.415(d).

⁵ The settlement agreement is submitted for approval pursuant to Section 1.420(j) of the Commission's Rules. An exhibit is enclosed stating that Escriva is not to receive any money or other consideration in excess of her legitimate expenses in connection with her rulemaking proposal.

⁶ The coordinates for Channel 222C3 at Olathe are 38-58-46 and 94-50-44.

⁷ The coordinates for Channel 257A at Topeka are 39-02-56 and 95-40-32.

⁸ The coordinates for Channel 223A at Silver Lake are 39-06-12 and 95-51-36.

6. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). Bott has stated its intention to reimburse Escriva for all reasonable expenses incurred in changing her frequency to the new channel.

7. Accordingly, pursuant to the authority contained 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 April 30, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Olathe, Kansas	222C3
Topeka, Kansas	247C, 257A, 262C, 295C, 299C
Silver Lake, Kansas	223A

8. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KCCV-FM, Olathe, Kansas, IS MODIFIED to specify operation on Channel 222C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for 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.

(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.

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the construction permit for Channel 223A, Topeka, Kansas, IS MODIFIED, to specify operation on Channel 257A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Permit BPH-871124MG except for the channel as specified above. Any changes, except those specified 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 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with Permit BPH-871124MG, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

10. 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:

Meredith S. Senter, Jr.	Marianne S. Harbart
Stephen D. Baruch	12637 Pawnee Lane
Leventhal, Senter & Lerman	Leawood,
2000 K Street, N.W., Suite 600	Kansas 66209
Washington, D.C. 20006-1809	
(counsel for Margaret Escriva)	

11. 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, Bott Broadcasting Company, permittee of Station KCCV-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

12. IT IS FURTHER ORDERED, That the Request for dismissal of the petition filed by Margaret Escriva IS GRANTED (RM-8054).

13. The window period for filing applications for Channel 223A at Silver Lake will open on May 3, 1993, and close on June 1, 1993.

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

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

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