

FCC MAIL SECTION

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

MM Docket No. 92-217

In the Matter of

Amendment of Section 73.202(b).	RM-8069
Table of Allotments,	RM-8139
FM Broadcast Stations.	
(Camden, East Camden and Stamps.	
Arkansas; Gibsland and Minden.	
Louisiana) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 20, 1995;

Released: June 29, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 7 FCC Rcd 6299 (1992), issued in response to a petition filed on behalf of Y95 Radio ("petitioner"), licensee of Station KCXY(FM),² Channel 237A, Camden, Arkansas. The *Notice* proposed the substitution of Channel 237C1 for Channel 237A at Camden, the reallocation of Channel 237C1 to East Camden, Arkansas, and modification of the license for Station KCXY(FM) accordingly. Additionally, to accommodate the proposal, petitioner requested the substitution of Channel 282A for Channel 238A at Stamps, Arkansas,³ as well as the substitution of Channel 239A for Channel 237A at Minden, Louisiana, and concomitant modification of the license of Station KASO-FM, accordingly. An *Order to Show Cause* was issued to the licensee of Station KASO-FM directing it to demonstrate why its license should not be modified to specify operation on Channel 239A in lieu of Channel 237A.⁴ Petitioner filed supporting and reply comments. Opposing comments were filed by LCB. A conflicting pro-

posal was filed on behalf of Bienville Parish Broadcasting ("Bienville") requesting the allotment of Channel 239A to Gibsland, Louisiana.⁵ Petitioner filed additional comments.⁶

2. As stated in the *Notice*, petitioner's proposal, filed pursuant to the provisions of Section 1.420(g) and (i) of the Commission's Rules, would provide a first local aural transmission service to East Camden (population 632),⁷ an incorporated community having its own governmental structure, post office, businesses and organizations. With regard to the public interest benefits of its proposal, petitioner advises that it will provide East Camden with local programming designed to meet the needs and interests of that community. Moreover, petitioner asserts that implementation of its proposal will enable it to provide an expanded service to 166,603 persons in an area of 16,364 square kilometers, representing an increase of 137,855 persons and an area of 14,791 square kilometers. Additionally, petitioner avers that Camden (population 15,356) would not be deprived of local service.⁸

3. As an additional benefit of its proposal, petitioner stated that the requested channel substitution at Stamps, Arkansas, would provide that community with a 6 kilowatt Class A allotment, while the requested substitution at Minden, Louisiana, would also enable Station KASO-FM an opportunity to operate at maximum Class A facilities, representing an advantage presently unavailable at each community.

4. In response to the *Notice*, Beinville requested the allotment of Channel 239A to Gibsland, Louisiana, as a first local aural transmission service. Beinville's proposal is mutually exclusive with the proposed substitution of Channel 239A for Channel 237A at Minden, Louisiana, to accommodate the proposed allotment of Channel 237C1 to East Camden, Arkansas. The distance between Gibsland and proposed Channel 239A at the licensed site of Station KASO-FM, Minden, Louisiana, is 31 kilometers (19 miles) whereas a distance of 115 kilometers (71 miles) is required in this instance.⁹ In an effort to accommodate each proposal, we have determined the availability of an alternate channel to resolve the conflict between the mutually exclusive proposals. Specifically, we have determined that Channel 283A is available for consideration at Gibsland, which permits the consideration of Channel 239A at Minden without the need for a comparative analysis of the two proposals.

5. LCB objects to the requested substitution of Channel 282A for Channel 238A at Stamps since it could not be used from its present owner-designated site.¹⁰ LCB claims

¹ The community of Gibsland has been added to the caption.

² Although the *Notice* herein identified the petitioner Y95 Radio as the licensee of Station KCXY(FM), Camden, based upon counsel's representation, the Commission's records reflect that Gary D. Terrell is the licensee (see File No. BLH-871028KG). Therefore, references herein to the licensee of Station KCXY(FM) are directed to Gary D. Terrell.

³ Lafayette County Broadcasting, Inc. ("LCB") is the applicant for Channel 238A at Stamps, Arkansas (File No. BPH-920401MB). LCB was served with a copy of the *Notice*.

⁴ Cook Enterprises, Inc., the licensee of Station KASO-FM, Minden, Louisiana, did not respond to the *Order to Show Cause* and therefore, pursuant to Section 1.87 of the Commission's Rules, is deemed to have consented to the modification, as proposed.

⁵ Public Notice of the counterproposal was given on December 29, 1992, Report No. 1922 (RM-8139).

⁶ After the record closed, petitioner filed a motion to sever. Section 1.415(d) of the Commission's Rules does not authorize the filing of pleadings beyond the reply comment period unless specifically requested or authorized. Therefore, petitioner's additional comments will not be considered.

⁷ Population figures cited herein are from the 1990 U.S. Census.

⁸ In addition to Station KCXY, Camden is served locally by FM Stations KCAC, Channel 208A, KWEH, Channel 246C2 and KMGC, Channel 283A. Fulltime AM Stations KAMD and KOSG are also licensed to Camden.

⁹ Coordinates for Channel 239A at Gibsland, Louisiana, are 32-30-54 and 92-58-54.

¹⁰ Coordinates at the site specified by LCB for Channel 238A at Stamps are North Latitude 33-24-12 and West Longitude 93-29-21 (File No. BPH-920401MB). The distance between LCB's preferred operation on Channel 238A at Stamps and requested

that a relocation of the transmitter to the site indicated in the *Notice* for Channel 282A at Stamps would place its tower in a less desirable location, approximately 12 kilometers (7 miles) west of the community. LCB claims that the site to accommodate Channel 282A at Stamps consists mainly of bottom land located adjacent to the Red River. Thus, LCB asserts that it would be required to construct an extremely tall tower to accommodate the antenna for its proposed operation. Further, LCB asserts that as the useable area for Channel 282A at Stamps is further removed from centers of population, the degree of service it could provide, even with six kilowatts effective radiated power, would be diluted. LCB urges that it could operate on Channel 238A at its presently applied for site with six kilowatts by utilizing a directional antenna, thereby providing protection to Station KCXY on Channel 237A at Camden, while providing additional service to populous areas in the general vicinity of Stamps.

6. LCB urges denial of the petitioner's reallocation proposal for several reasons. First, LCB notes that petitioner may upgrade Station KCXY(FM) at its currently licensed site at Camden, from which 70 dBu coverage could be provided to East Camden as well. Thus, LCB urges that petitioner's proposal offers no improvement in the reception service Station KCXY(FM) would provide if reallocated to East Camden, nor would petitioner be able to provide East Camden with any specialized service. LCB claims that petitioner merely seeks enhancement of its upgrade request by proposing a first local service to the smaller community of East Camden. Further, LCB remarks that the larger community of Camden currently has three FM allotments representing one allotment per 5.118 persons, which would be reduced to one allotment per 7.678 persons if the proposal is granted. LCB asserts that as the less populous community of East Camden presently receives 70b dBu service from Station KWEH(FM), Channel 246C2, Camden, and 60 dBu service from Station KCXY(FM), petitioner has not demonstrated that the provision of a first local service to East Camden significantly outweighs the loss of the transmission service at Camden, citing *Van Wert, Ohio and Monroeville, Indiana*, 7 FCC Rcd 6519 (1992). LCB concludes that the reassignment of allotments from larger to smaller communities that provide no public interest benefits but merely are intended to enhance an upgrade proposal, is contrary to the Commission's intent in implementing its change in community of license policy to further the goals of Section 307(b) of the Communications Act of 1934, as amended.

7. With respect to LCB's objection to the proposed site change to accommodate the substitution of Channel 282A for Channel 238A at Stamps, petitioner comments that its proposal was filed prior to the effective date of the requirements for protection of pending site proposals by petitioners for new allotments. Therefore, petitioner asserts that LCB's objection is not valid.¹¹

8. As pertains to the reallocation of Station KCXY(FM) to East Camden, petitioner reiterates that Camden will not be left unserved. Petitioner states that not only will it provide an improved service to Camden if its proposal is adopted, but the community will continue to receive local service from Station KWEH(FM), Channel 246C2 and Station KMGC(FM), Channel 283A, as well as from AM Stations KAMD and KOSG (formerly KJWH(AM)).

DISCUSSION

9. Initially, we address the proposed removal of a local transmission service at Camden. LCB's reliance on *Van Wert, Ohio and Monroeville, Indiana, supra*, for rejection of the proposed reallocation of Channel 237C1 to East Camden is misplaced. While the cited case also involved a proposed change in the community of license without a change in the level of reception service, the disruption in local service to the larger community was the pivotal factor. Specifically, although the reallocation proposal would have provided a first local transmission service to the smaller community of Monroeville, Indiana, it would have deprived the larger community of Van Wert, Ohio of its sole local competitive and sole local nighttime voice. Therefore, it was determined that there were insufficient public interest benefits to outweigh the loss of the transmission service to the original community of license.

10. Here, our analysis is based upon the transmission service gains and losses that would result from the reallocation of Channel 237C1 to East Camden. Reception service is not an issue in this proceeding as Station KCXY(FM) is not proposing to relocate its transmitter site. Compare *Eatonton and Sandy Springs, Georgia, et al.*, 6 FCC Rcd 6580 (1991), *recon. pend.* (reception gain and loss areas would result if change in community proposal was approved). In formulating our determination, we are guided by the Commission's change of community procedures. See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*Change of Community MO&O*). Utilizing those procedures, we compare the existing arrangement of allotments with the proposal using our FM allotment priorities.¹²

11. Although Camden is larger than East Camden neither community is in an urbanized area. Camden presently has local transmission services provided by Station KCXY(FM), Station KCAC(FM), Channel 208A, Station KWEH(FM), Channel 246C2, Station KMGC(FM), Channel 283A, and fulltime AM Stations KAMD and KOSG. In our analysis, the first two allotment priorities are not implicated. Rather, the benefits of providing a first local transmission service to East Camden triggers allotment priority three (first local service), whereas the level of service remaining at Camden diminishes to priority four (other

Channel 237C1 at East Camden at coordinates 33-30-14 and 92-48-38 is 64.1 kilometers (40 miles) whereas a distance of 133 kilometers (82 miles) is required between first adjacent Class A-C1 channels.

¹¹ In any event, petitioner's responsive comments included an engineering statement which indicates that LCB could operate on Channel 282A from its preferred site with 6 kilowatts effective

radiated power pursuant to the provisions of Section 73.215 of the Commission's Rules.

¹² The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

public interest matters). Therefore, grant of petitioner's proposal would result in a preferential arrangements of allotments.

12. As to LCB argument that petitioner presently serves East Camden from its present site, and therefore would not be able to provide any specialized service to the new community, it is a licensee's primary obligation to serve the needs and interests of the community to which it is licensed.¹³ Petitioner provided information relative to its obligation and intent to present programming designed to meet the local needs and interests of East Camden.

13. Based upon the information presented, we believe the public interest would be served by substituting Channel 237C1 for Channel 237A at Camden and reallocating Channel 237C1 to East Camden since a preferential arrangement of allotments will result. Furthermore, the reallocation will not result in the relocation of a station from a rural to a larger urban area. *See Change of Community, supra*. Accordingly, pursuant to the provisions of Section 1.420(g) and (i) of the Commission's Rules, we are modifying herein the license of Station KCXY(FM) to specify operation on Channel 237C1 at East Camden, Arkansas. Additionally, to accommodate the East Camden modification, we will substitute Channel 282A for Channel 238A at Stamps, Arkansas.¹⁴ Lafayette County Broadcasting, Inc., the applicant for Channel 238A at Stamps, may amend its application to specify Channel 282A at that community without loss of cut-off protection. *See Salamanca, New York and Bradford, Pennsylvania*, 50 FR 26208 (1985), and *Sanibel, Florida*, 50 FR 32706 (1985). A copy of this *Report and Order* will be served on LCB. Additionally, as Cook Enterprises, Inc. ("Cook"), license of Station KASO-FM, Minden, Louisiana, filed no response to the *Order to Show Cause* why its license should not be modified to specify operation on Channel 239A in lieu of Channel 237A, it is deemed to have consented to the proposed modification to accommodate the East Camden proposal. In accordance with established Commission policy, Cook is entitled to reimbursement from Gary D. Terrell for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). Petitioner has previously stated a willingness to reimburse Cook accordingly.

14. In response to the counterproposal filed by Bienville, we will allot Channel 283A to Gibsland, Louisiana, in order to provide a first local aural transmission service to that community.

15. As indicated in the *Notice*, Channel 237C1 can be allotted to East Camden at the licensed site of Station KCXY(FM), at coordinates 33-30-14 and 92-48-38.¹⁵ Channel 282A can be substituted for Channel 238A at Stamps, Arkansas, with a site restriction 12.2 kilometers (7.6 miles) west of the community at coordinates 33-23-20 and 93-37-38. The site restriction at Stamps is required to avoid short spacing to the site specified in the license issued to Station KMGC(FM) (File No. BLH-941201KA), Camden, Arkansas, at coordinates 33-30-14 and 92-48-38, and to the licensed site for Station KJLO-FM, Channel 281C, Monroe, Louisiana, at coordinates 32-39-36 and 92-05-15. Channel 239A can be substituted for Channel 237A at the licensed site of Station KASO-FM, Minden, Louisiana, at coordinates 32-37-50 and 93-16-56. Channel 283A can be allotted to Gibsland, Louisiana, with a site restriction 3.3 kilometers (2 miles) west of the community at coordinates 32-32-27 and 93-05-23, to avoid a short spacing to the licensed site of Station KJLO-FM, Channel 281C, Monroe, Louisiana, at the coordinates indicated above.¹⁶

16. 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 August 14, 1995, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Camden, Arkansas	246C2, 283A
East Camden, Arkansas	237C1
Stamps, Arkansas	263C2, 282A
Gibsland, Louisiana	283A
Minden, Louisiana	239A

17. The window period for filing applications for Channel 283A at Gibsland, Louisiana, will open on **August 14, 1995**, and close on **August 29, 1995**.

18. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Gary D. Terrell (File No. BLH-871028KG), for Station KCXY(FM), IS MODIFIED to specify operation on Channel 237C1 at East Camden, Arkansas, in lieu of Channel 237A at Camden, Arkansas, subject to the following conditions:

¹³ See Section 73.1120 of the Commission's Rules.

¹⁴ Petitioner's proposal was filed prior to the effective date of MM Docket 92-348. *See Conflicts between Applications and Petitions for Rulemakings to Amend the FM Table of Allotments*, MM Docket No. 91-348, 7 FCC Rcd 4917 (1991). As LCB's comments did not demonstrate overriding public interest benefits to warrant a preference over those to be derived from the petitioner's proposal, LCB's application for a selected location at Stamps must be considered a site preference only. *See Andalusia, Alabama*, 49 FR 32201 (1984).

¹⁵ As indicated in the *Notice*, Channel 237C1 at East Camden is short spaced to the licensed site of Station KMTB(FM), Channel 237A, Murfreesboro, Arkansas, at coordinates 34-05-44 and 93-41-31, and is therefore dependent upon Station KMTB(FM) moving to Channel 258C3 pursuant to the modification provisions set forth in MM Docket No. 89-290. *See Report and Order* (MM Docket No. 89-290), 7 FCC Rcd 5493

(1992). An application for a license to cover the construction permit issued to Station KMTB(FM) on Channel 258C3 at Murfreesboro is pending (File No. BLH-941104KB and File No. BPH-930111HF). Therefore, the issuance of a license for Station KCXY(FM) on Channel 237C1 may be withheld until Station KMTB(FM) is licensed on its new channel at Murfreesboro. We will serve Penn-Lee Broadcasting, Inc., the licensee of Station KMTB(FM) with a copy of this *Report and Order*.

¹⁶ We recognize that the allotment of Channel 283A at Gibsland is short spaced to the license issued to Jade Communications, Inc. ("Jade") (File No. BLH-941201KA) for Station KMGC(FM) to operate on Channel 283A at Camden, Arkansas, at coordinates 33-30-14 and 92-48-38. However, the Camden authorization was granted in accordance with the provisions of Section 73.215 of the Commission's Rules which allows contour protection for short spaced assignments. We will serve Jade with a copy of this *Report and Order*.

(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.

19. IT IS FURTHER ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cook Enterprises, Inc. (File No. BLH-7846) for Station KASO-FM, Minden, Louisiana, IS MODIFIED to specify operation on Channel 239A in lieu of Channel 237A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KASO-FM's license (File No. BLH-7846), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a 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 license File No. BLH-7846, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

20. Pursuant to Commission Rule Section 1.1104(1)(k) and 2)(k), any party seeking a change in 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, Gary D. Terrell, licensee of Station KCXY(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license and upgrade at East Camden, Arkansas.

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

Cook Enterprises, Inc.
P.O. Box 1240 Minden, LA 71055
(Licensee of Station KASO-FM))

Lafayette County Broadcasting, Inc.
Rte. 1, Box 179
Stamps, AR 71860
(Applicant - Stamps, AR)

Penn-Lee Broadcasting, Inc.
P.O. Box 907
Murfreesboro, AR 71958
(Licensee of Station KMTB(FM))

Jade Communications, Inc.
P.O. Box 44
Camden, AR 71701
(Licensee of Station KMGC(FM))

22. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

23. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 283A at Gibsland, Louisiana, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
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 com-

ments 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.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

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.