

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20541
DOCKET # 94-113
ORIGINAL

DISPATCHED BY
MM Docket No. 94-113

In the Matter of

Amendment of Section 73.202(b),	RM-8514
Table of Allotments,	RM-8517
FM Broadcast Stations.	RM-8569
(Cape Girardeau, Chaffee, Scott City & Miner, Missouri, and Union City, Tennessee)	RM-8570

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 1, 1995; Released: September 12, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 5715 (1994), proposing the allotment of Channel 230A to Cape Girardeau, Missouri, as that community's third FM broadcast service. The *Notice* was issued in response to a petition filed by Kevin G. Greaser ("Greaser"). Greaser filed comments restating his interest in Channel 230A at Cape Girardeau. Stephen W. Sikes ("Sikes"), Scott City Broadcasters ("SCB") and Twin States Broadcasting, Inc. ("Twin States") filed counterproposals.¹ Greaser filed reply comments.

2. Sikes counterproposed the allotment of Channel 229A to Miner, Missouri (RM-8570). According to Sikes, the requested allotment would provide a first local service to Miner, an incorporated community with 1,218 people. In support of the requested allotment, Sikes states that Miner has its own local government consisting of a mayor and four aldermen, its own police and volunteer fire department and a water treatment plant. Further, Miner's principal business include the Sikeston Factory Outlet with 44 stores, Manor Aluminum, James Trailer Co., D&D Trailer Manufacturing, Inc. and four motels. Sikes has stated his intention to construct and operate a commercial broadcast station in Miner, if the counterproposal is granted.

3. SCB counterproposed the allotment of Channel 230A to Scott City, Missouri, as that community's first local transmission service (RM-8569). In support of the counterproposal, SCB provided information showing that Scott City has the attributes of a community for allotment purposes. SCB stated its intention to apply for Channel 230A if allotted to Scott City.

4. Twin States filed a counterproposal requesting substitution of Channel 284C2 for Channel 285A at Union City, Tennessee, and modification of its license for Station WKWT(FM) accordingly (RM-8517). To accommodate the upgrade at Union City, Twin States also requests the substitution of channel 230A for Channel 284A at Chaffee, Missouri. Twin States indicated it will reimburse Station WYRX(FM), Channel 284A, for the reasonable expenses incurred as a consequence of the change in its operating frequency. Twin States argues that its proposal should be preferred over Cape Girardeau as Channel 284C2 at Union City will provide more service to underserved areas and serves a greater overall population. According to Twin States, its proposal will provide 543 persons with a third aural reception service, 8,691 persons with a fourth aural reception service, and 11,936 persons with a fifth aural reception service while the allotment at Cape Girardeau would provide, at best a sixth service to 816 persons.

5. Greaser, in reply comments, continues to support the allotment of a channel at Cape Girardeau. Greaser states, however, that in the event the Commission were to allocate a channel to Scott City, Missouri, instead of Cape Girardeau, Missouri, he would file an application for that allotment and promptly build a station in the event he is granted a construction permit. In response to the counterproposal for Miner, Missouri, Greaser argues that Miner is ineligible for an allotment under established Commission precedent. Greaser believes the proposed Miner, Missouri, allotment should be rejected or in the alternative, the Commission should ascertain whether an alternate channel is available for allotment at Miner. Greaser argues, with respect to the Twin States proposal, that it should also be rejected. Greaser points out that he is requesting a new allotment while Twin States is proposing an upgrade which will not result in a new broadcast service but merely allow Twin States to expand the service area for its existing station. Greaser submits that the public interest warrants the allocation of a new service over increasing the coverage area for an existing station.

6. We have before us four mutually exclusive proposals. In an effort to accommodate all the proposals, the staff performed a search to determine if alternate channels were available to provide new or additional service to the communities. Our analysis indicates Channel 296A can be allotted to Miner, Missouri, thereby removing the conflict with the other communities in this proceeding. The study further indicates that there are no other channels meeting the spacing requirements that will resolve the remaining conflicts. Therefore, our decision in this proceeding for the remaining communities is guided by the allotment priorities in *Revision of FM Assignments and Policies and Procedures*, 90 FCC 2d 88 (1982).² The allotment of Channel 230A at Scott City will provide a first local service, fulfilling priority (3). The proposal for Union City, Tennessee, to substitute Channel 284C2 for Channel 285A and substitution of Channel 230A for Channel 284A at Chaffee, Missouri, to accommodate Union City, and the proposal for Cape Girardeau, Missouri, to add a third local FM broadcast service, would both be considered under priority (4), other public interest matters. While our engineering analysis agrees with Twin States that its proposed upgrade

¹ Public notice of the counterproposals was given on December 28, 1994, Report No. 2050.

² (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 given to priorities (2) and (3).]

at Union City could provide a third, fourth and fifth aural service, a first local service is generally preferred over a proposal to upgrade an existing facility. See *Benton, Arkansas*, 2 FCC Rcd 1963, 1965 (1987) and *Lafayette, Tennessee*, 6 FCC Rcd 3289 (1991). Based on the information presented in this proceeding and the above analysis, Scott City is afforded the higher priority and must be preferred over the Twin States and Greaser proposals, since it will provide a first local service to the community.³ See *Epworth and Dyersville, Iowa*, 7 FCC Rcd 106 (1992).

7. Channel 296A can be allotted to Miner, Missouri, in compliance with the spacing requirements provided there is a site restriction 7.6 kilometers (4.7 miles) southwest of the community.⁴ The site restriction will prevent a short-spacing to Station KMIS-FM, Channel 293C2, New Madrid, Missouri, Station WWYN, Channel 295C1, McKenzie, Tennessee, and to Station WDDD-FM, Channel 297B, Marion, Illinois. Channel 230A can be allotted to Scott City, Missouri, in compliance with the Commission's spacing requirements without a site restriction.⁵

8. 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 **October 27, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Miner, Missouri	296A
Scott City, Missouri	230A

9. 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:

Eric S. Kravetz Brown, Nietert & Kaufman, Chartered 1920 N Street, N.W., #660 Washington, D.C. 20036 (counsel for Twin States Broadcasting)	Jeffrey D. Southmayd Southmayd & Miller 1220 Nineteenth Street, N.W. Suite 400 Washington, D.C. 20036 (counsel for Kevin G. Greaser)
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Chartres Media, Inc.
c/o Station KYRX(FM)
185 West Park Mall
Cape Girardeau, Missouri
63701

10. The window period for filing applications for Channel 296A at Miner, Missouri, and Channel 230A at Scott City, Missouri, will open on **October 27, 1995** and close on **November 27, 1995**.

11. IT IS FURTHER ORDERED, That the counter-proposal filed by Twin States Broadcasting, Inc. (RM-8517) IS DISMISSED.

12. IT IS FURTHER ORDERED, That the petition filed by Kevin G. Greaser (RM-8514) IS DISMISSED.

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

14. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

³ In *FM Priorities*, we specifically stated that these Priorities are intended to meet our obligation under Section 307(b) of the Communications Act of 1934, as amended, to provide "a fair, efficient, and equitable distribution of radio service."

⁴ The coordinates for Channel 296A at Miner, Missouri, are 36-55-14 and 89-40-00.

⁵ The coordinates for Channel 230A at Scott City, Missouri, are 37-13-00 and 89-31-28.