

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

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In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 94-78  
Table of Allotments, ) RM-8472  
FM Broadcast Stations. ) RM-8525  
(Cloverdale, Montgomery )  
and Warrior Alabama) )

TO: Chief, Mass Media Bureau

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JAN 11 1995

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PETITION FOR RECONSIDERATION

William P. Rogers ("Rogers"), by his attorney, hereby respectfully requests the Chief, Mass Media Bureau to reconsider and set aside the action of the Chief, Allocations Branch, taken by Report and Order released December 11, 1995, to the extent that such Report and Order fails to allocate Channel 254A to the city of Florence, Alabama. In support thereof, it is alleged:

1. By Report and Order in this proceeding, released December 11, 1995, the Chief, Allocations Branch, refused a request filed by William P. Rogers to allocate Channel 254A to the city of Florence, Alabama. The Chief gave three reasons for his refusal to allocate the channel. None of these reasons is correct. Each will be discussed, seriatim.

2. The first reason given for the rejection of the

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allocation is that, allegedly, it is short spaced to the licensed site of Station WZLQ(FM), Tupelo, Mississippi. The licensee of Station WZLQ(FM), however, has a construction permit for a new site, which is not short spaced to the Florence allotment. While that construction permit has expired, it has never been deleted by the FCC and, unless it is deleted, it remains in effect. Baker v. FCC, 834 F. 2d 181 (D.C. Cir. 1987). Indeed, counsel for Rogers has made inquiry of counsel for the licensee of Station WZLQ(FM) and has learned that the licensee of that station has, in fact, completed construction at its new site and is filing a license application on FCC Form 302. That application may already have been filed, but this cannot be confirmed because of the "government shut-down". In any event, the Chief clearly was mistaken when he assumed that the WZLQ(FM) construction permit was "dead" and, for that reason, standing alone, the Report and Order must be set aside.

3. The second reason given for rejection of the Florence allotment is that the allotment would not provide a city grade signal to the entire community. In Barry Skidelsky, 70 RR 2d 722 (Rev. Bd. 1992), however, the Review Board determined that coverage of 80% of a community is sufficient to comply with the city grade coverage requirements and, upon information and belief, the FCC processing line has used the same criterion, uniformly. There is no logical reason why the processing line standards should be any different from the requirements of the Allocations Branch, and there is no prior case, ruling or precedent that suggests, in any

way, that the Allocations Branch criteria should be any stricter than the processing line requirements. Indeed, the Commission has, in at least one instance, made an allotment where no transmitter site was available where the city grade contour would even reach any portion of the community of license. Bay Shore, New York, 57 Pike and Fischer RR 2d 1275 (1985). Moreover, the Allocations Branch and the full Commission have made numerous allotments to larger cities, knowing full well that there was no site from which any applicant could achieve even the normally sufficient 80% coverage. See the discussion in Woodstock and Broadway, Virginia, 2 FCC Rcd 7064 (Allocations Branch, 1988), at footnote 2.

4. The last reason given by the Chief for the rejection of the Florence allotment is that Rogers' engineer used terrain enhancement to demonstrate coverage of more than 80% of the city. The reason is also specious. As shown, the FCC has on numerous occasions made allotments where there was no possibility of serving as much as 80% of a city. Here Rogers' engineer showed that a site was available from which coverage of more than 80% could be achieved.

5. The rejection of the Florence allotment means that there will be no new service to the public. Instead, the spectrum in question will be used solely to accommodate the convenience of existing stations for greater power and coverage. This is not only contrary to long-standing FCC policy; it is also inconsistent with the recently expressed intention of the Congress that new spectrum should be created and auctioned, with the revenues going to the

U.S. Treasury. See, Seven Year Balanced Budget Reconciliation Act of 1995, HR-2491.

January 10, 1996

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Respectfully submitted,

WILLIAM P. ROGERS

By:

  
Lauren A. Colby  
His Attorney

CERTIFICATE OF SERVICE

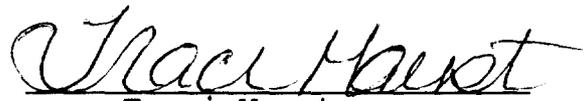
I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 10<sup>th</sup> day of January, 1996, to the offices of the following:

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