

DOCKET FILE COPY ORIGINAL

FCC MAIL SECTION

OCT 22 11 07 AM '96

Federal Communications Commission

DA 96-1705

DISPATCHED BY

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 95-28
Table of Allotments,)	RM-8593
FM Broadcast Stations.)	RM-8696
(Stamping Ground and Nicholasville,)	
Kentucky) ¹)	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 11, 1996; Released: October 18, 1996

By the Chief, Allocations Branch:

1. At the request of Scott County Broadcasting, Inc. ("petitioner"), licensee of Station WKYI(FM), Channel 256A, Stamping Ground, Kentucky, the Commission has before it the Notice of Proposed Rule Making, 10 FCC Rcd 230 (1995), proposing the substitution of Channel 241A for Channel 256A at Stamping Ground to enable Station WKYI(FM) to increase its power to six kilowatts and to eliminate interference (RM-8593).² Petitioner also requests the modification of Station WKYI(FM)'s license to specify operation on Channel 241A in lieu of Channel 256A at Stamping Ground. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted.³ A counterproposal was filed by Mortenson Broadcasting Company of Kentucky, L.L.C. ("MBC"), proposing the allotment of Channel 240A at Nicholasville, Kentucky, as the community's second local FM transmission

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

²On June 16, 1995, a license (File No. BLH-941214KY) was granted to cover the construction permit (File No. BMPH-940422JA). Petitioner subsequently filed a license renewal application (BRH-960401T4) which was granted on July 26, 1996, and an application to modify its license (BMLH-950119IF) which was granted on July 30, 1996.

³As indicated in the Notice, petitioner's proposal, although signed and address provided, was not verified as required in Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in its responsive comments and has complied accordingly.

service (RM-8696).⁴ Petitioner filed reply comments. After the record closed, MBC and petitioner filed untimely pleadings directed toward the counterproposal.⁵ On August 30, 1996, MBC filed a request to withdraw its counterproposal.⁶

2. The withdrawal of MBC's counterproposal removes the conflict between the parties, and a comparison of the proposals is no longer necessary. Therefore, based on the information before us, we believe the public interest would be served by substituting Channel 241A for Channel 256A at Stamping Ground, Kentucky, since it would enable Station WKYI(FM) to increase its power to six kilowatts and would eliminate interference within its protected contour. An engineering analysis has determined that Channel 241A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) east to avoid short-spacings to the licensed sites of Station WRSL-FM, Channel 242C3, Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana.⁷ As requested, we also modify Station WKYI(FM)'s license to specify operation on Channel 241A in lieu of Channel 256A at Stamping Ground, Kentucky. We note that the procedures outlined in Modification of FM and TV Licenses, 98 FCC 2d 916 (1984), and Section 1.420(g) do not apply here since no change in the class of the channel is involved.⁸

⁴Public Notice of the counterproposal was given on September 13, 1995, Report No. 2098 (RM-8696).

⁵MBC filed a "Supplement to Counterproposal," petitioner filed an "Opposition to Supplement and Statement for the Record," MBC filed a "Motion to Strike Opposition to Supplement and Statement for the Record," and MBC also filed a "Reply to Opposition to Supplement and Statement for the Record." Although the untimely pleadings were accompanied by motions for their acceptance, Section 1.415(d) of the Commission's Rules does not contemplate the filing of comments beyond the pleading cycle set forth in the Notice. Petitioner also filed a status "Inquiry" and MBC filed a responsive letter. However, in view of the resolution herein, these untimely pleadings need not be considered.

⁶In accordance with Section 1.420(j) of the Commission's Rules, the parties certify that neither has paid nor will pay money or other consideration in exchange for withdrawal of the expression of interest. MBC has disclosed that the parties intend to enter into negotiations looking toward a time brokerage agreement at a future date. But, the parties have not entered into a time brokerage agreement at this time. The parties state that "[t]he intended agreement will be an arms-length negotiation which will involve standard and customary terms in which the broker will provide programming in exchange for a monthly payment and the right to sell advertising on the station." Under the circumstances, we do not believe that this constitutes "other consideration" within the ambit of Section 1.420(j), and we hereby grant the request for withdrawal of the expression of interest.

⁷The coordinates for Channel 241A at Stamping Ground are North Latitude 38-17-43 and West Longitude 84-33-10.

⁸The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).

3. 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 December 2, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Stamping Ground, Kentucky	241A

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Scott County Broadcasting, Inc., for Station WKYI(FM), Stamping Ground, Kentucky, IS MODIFIED to specify operation on Channel 241A in lieu of Channel 256A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station WKYI(FM)'s license, BMLH-950119IF, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301), specifying the new facility.
- (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 BMLH-950119IF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

5. IT IS FURTHER ORDERED, That the counterproposal filed by Mortenson Broadcasting Company of Kentucky, L.L.C., proposing the allotment of Channel 240A at Nicholasville, Kentucky (RM-8696), IS DISMISSED.

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

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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