

FCC MAIL SECTION

Federal Communications Commission

DA 97-475

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-125
Table of Allotments,	)	RM-8807
FM Broadcast Stations.	)	RM-8861
(Hilton and Albion, New York) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: March 5, 1997**

**Released: March 14, 1997**

By the Chief, Allocations Branch:

1. At the request of Alan Bishop d/b/a Hilton Broadcasting ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 6674 (1996), proposing the allotment of Channel 238A to Hilton, New York, as the community's first local aural service. Comments were filed by the petitioner reiterating his intention to apply for the channel, if allotted to Hilton,<sup>2</sup> and by Great Lakes Wireless Talking Machine Company ("Great Lakes") in opposition to the Hilton allotment. In addition, a counterproposal was filed by Albion Broadcasting Associates ("ABA") proposing the allotment of Channel 238A to Albion, New York.<sup>3</sup> Reply comments were filed by the petitioner and ABA.

2. ABA states that Albion, with a 1990 U.S. Census population 6,624 persons, is the seat of Orleans County (population 41,846). Neither Albion nor Orleans County, according to ABA, has any local aural service, and thus the allotment of Channel 238A would provide a first local aural service to both the community and its county. ABA states that it will apply for the channel, if allotted.

<sup>1</sup> The community of Albion has been added to the caption.

<sup>2</sup> After the record closed, the petitioner filed a statement withdrawing his petition, stating that he is no longer interested in apply for the channel at Hilton. Since no other party expressed an interest in applying for the channel at Hilton, we will dismiss the petition. Although the withdrawal request was not filed in compliance with the requirements of Section 1.420(j) of the Commission's Rules, we will excuse the petitioner's infraction in this instance in light of the ultimate disposition of this proceeding. However, our determination should not be interpreted as a relaxation of the Commission's Rules requiring a withdrawing party to an allotment proceeding to provide a copy of any written agreement or affidavit setting forth the particulars of the withdrawal, as specified in Section 1.420(j). See Imboden, Arkansas, 11 FCC Rcd 4714 (1996). See also Dublin, Georgia, Abbeville, Laurens and Burlington, South Carolina, 6 FCC Rcd 7145 (1991). As a result of the disposition of the proposal, we need not address the pleadings in response to the Hilton proposal.

<sup>3</sup> Public Notice of the filing of the counterproposal was given on August 14, 1996, Report No. 2148.

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Technical Summary

3. Channel 238A can be allotted to Albion with a site restriction of 0.7 kilometers (0.4 miles) northeast to avoid a short-spacing to Station WJYE, Channel 241B, Buffalo, New York.<sup>4</sup> This allotment has been concurred in by the Canadian Government as a specially negotiated short-spaced allotment since Albion is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment is short-spaced to Stations CKDS-FM, Channel 237C1, Hamilton, Ontario, and CJBC1F and proposed CJBC-1, Channel 238C1, Belleville, Ontario, Canada.

4. We believe the public interest would be served by the allotment of Channel 238A at Albion, New York, since it could provide the community with its first local FM service. 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 28, 1997, 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>
Albion, New York	238A

5. The window period for filing applications for Channel 238A at Albion, New York, will open on April 28, 1997, and close on May 29, 1997.

6. IT IS FURTHER ORDERED, That the petition for rule making filed by Alan Bishop d/b/a Hilton Broadcasting (RM-8807) IS DISMISSED.

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

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>4</sup> The coordinates for Channel 238A at Albion are 43-15-00 North Latitude and 78-11-12 West Longitude.