

FCC MAIL SECTION

Federal Communications Commission

DA 98-1574

Aug 17 9 35 AM '98

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

DISPATCH

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-8
Table of Allotments,	)	RM-9178
FM Broadcast Stations.	)	
(Albion, Honeoye Falls and South Bristol	)	
Township, New York)	)	

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

**Adopted: August 5, 1998**

**Released: August 14, 1998**

By the Chief, Allocations Branch:

1. At the request of Citicasters Co. ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 2147 (1998), proposing: (1) the reallocation of Channel 297A from Honeoye Falls, New York, to South Bristol Township, New York, and the modification of Station WMAX-FM's (formerly WRCD(FM))<sup>1</sup> license to specify South Bristol Township as its community of license; (2) the reallocation of Channel 236B from South Bristol Township to Honeoye Falls and the modification of Station WNVE's license to specify Honeoye Falls as its community of license; and (3) the substitution of Channel 271A for Channel 238A at Albion, New York.<sup>2</sup> Petitioner, the licensee of both stations, filed comments reiterating its intention to apply for the channels, if allotted as proposed. No other comments were received.

2. The Notice stated that the reallocation of channels between South Bristol Township (population 1,663) and Honeoye Falls (population 2,340) would result in the more populous community being served with the higher powered Class B channel and allow for a net increase in population served by the two stations of 280,565 persons. Further, while there would be a loss in service affecting 79,341 persons, the Commission's engineering study confirmed that there would be no unserved or underserved areas created by the channel reallocations. In fact, petitioner noted that almost 97% of the population within the loss area would continue to receive at least five or more signals. However, since the only benefit of the channel reallocations appeared to be the provision of an additional service to the Rochester Urbanized Area, we

<sup>1</sup> The Commission approved a change of the call sign from WRCD(FM) to WMAX-FM in March 1998.

<sup>2</sup> The alternative channel at Albion, New York, also requires new reference coordinates. Inasmuch as the underlying petition for rule making was filed before the now-pending applications for the Channel 238A allotment at Albion, we will consider both an alternate channel and changing the reference coordinates in the context of this proceeding. Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917, 4920 (1992).

---

requested that the petitioner provide any additional information which would demonstrate that the overall proposal would result in a preferential arrangement of allotments.

3. In response, petitioner states that, in accordance with Commission policy, the allotment of the higher class channel to the larger community of Honeoye Falls would be a fairer and better use of the spectrum since it would enable an increase in the total number of people served, citing Parker and Port St. Joe, Florida, 11 FCC Red 1095 (1995) and Coleman Sebewaing and Tuscola, Michigan, 11 FCC Red 11286 (1996). In addition, it contends that Honeoye Fall's proximity to Rochester does not make it less deserving of a higher powered channel to provide local service. Honeoye Falls, according to petitioner, is located approximately 13 miles south of Rochester and outside of the Rochester Urbanized Area, with both Interstate 90 and rural countryside lying between the two communities. It is also located further from Rochester than either Irondequoit or Brighton, New York, both of which have their local broadcast stations.

4. Petitioner has provided information demonstrating that Honeoye Falls is an independent community. It states that Honeoye Falls was founded in 1791 and incorporated in 1838. It has its own government, with an elected mayor and four trustees. It also maintains its own zoning board, planning board, board of ethics, conservation board and other offices. Honeoye falls relies on the county for police protection, but does have its own local fire department and, together with the nearby community of Lima, operates its own schools. In addition, the community has at least 70 local businesses and 16 local industries, which include, for example, drug stores, dry cleaning establishment, a variety store, furniture stores, auto parts distributors and automobile agencies, lawyers, doctors, dentists, optometrists, and veterinarians. Honeoye Falls also has a number of churches and civic organizations, including a Chamber of Commerce, Fortnightly, Historical Society, Literary Club, American Legion, Rotary, Masons and Boy and Girl Scouts.

5. Petitioner argues that the reallocation of Channel 236B to the larger and more densely populated community of Honeoye Falls should not be denied solely because it would cover the Rochester Urbanized Area. Petitioner also notes that the Commission has previously authorized Station WNVE to use a translator when it approved a transmitter site change which resulted in service to Rochester. A grant of its proposal herein would simply enable Station WNVE to continue to serve the Rochester area without the use of a translator. The petitioner points out that the Commission has long held that "the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of a new or expanded serve at another community," citing Coleman, Sebewaing and Tuscola, Michigan, supra.

6. We believe the public interest would be served by reallocating Channel 236B to Honeoye Falls and modifying Station WNVE's license accordingly. We are making this

determination under FM Priority 4.<sup>3</sup> Specifically, we find that this priority will be furthered by the provision of a higher powered allotment to the more populous community and enabling an additional service to be received by more than 280,000 people. Honeoye Falls previously has been found to be a community for allotment purposes, as shown by the fact that Channel 297A is currently allotted there. Further, we find that the information provided by the petitioner demonstrates that Honeoye Falls is independent of Rochester. South Bristol Township will also retain a local aural transmission service through the reallocation of Channel 297A and the modification of Station WMAX-FM's license accordingly. To accommodate these channel changes, we will also substitute Channel 271A for Channel 238A at Albion, New York. As stated in the Notice, two applications are now pending, that of Calvary Chapel of the Westside, Inc. (BPH-970529MD) and the petitioner herein, Citicasters Company (BPH-970529MC). In compliance with Commission policy, the applicants will be allowed to amend their applications to specify Channel 271A at new transmitter sites without loss of cut-off protection.<sup>4</sup>

#### Technical Summary

7. Channel 236B can be allotted to Honeoye Falls in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 16.5 kilometers (10.3 miles) northeast, to accommodate petitioner's desired transmitter site. This site is short-spaced to Stations CKQT-FM, Channel 235B, Oshawa, Ontario, and CKDS-FM, Channel 237C1, Hamilton, Ontario, Canada. Channel 297A can be allotted to South Bristol Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, to accommodate petitioner's desired transmitter site. Channel 271A can be allotted to Albion in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. This allotment is short-spaced to Station CFNY-FM, Channel 271C1, Brampton, Ontario, Canada, and to the vacant Channel 272B at Belleville, Canada.<sup>5</sup> Canadian concurrence in these allotments has been received since each of the communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border. The allotments at Honeoye Falls and Albion have been concurred in as specially negotiated short-spaced allotments.

---

<sup>3</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime 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)

<sup>4</sup> Since Calvary Chapel of the Westside, Inc. and Citicasters Company are only applicants for Channel 238A at Albion, neither is entitled to reimbursement for the costs associated with amending their applications to specify Channel 271A and a different transmitter site. See, Columbia and Dothan, Alabama, Graceville, Santa Rosa Beach and Springfield, Florida, 7 FCC Red 2112 (1992), and cases cited therein.

<sup>5</sup> The coordinates for Channel 236B at Honeoye Falls are 43-02-00; 77-25-17. The coordinates for Channel 297A at South Bristol Township are 42-44-47; 77-25-35. The coordinates for Channel 271A at Albion are 43-14-48; 78-11-36.

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 September 28, 1998, 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	271A
Honeoye Falls, New York	236B
South Bristol Township, New York	297A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the licenses of Citicasters Company for Station WMAX-FM, Channel 297A, Honeoye Falls, New York, and Station WNVE, Channel 236B, South Bristol Township, ARE MODIFIED to specify South Bristol Township, New York and Honeoye Falls, New York, respectively, as each station's community of license, subject to the following conditions:

- (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).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (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.

10. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the applicants for Channel 238A at Albion, New York, as follows: Calvary Chapel of the Westside, Inc., 67 Lyell Avenue, Spencerport, NY 14559 (BPH-970529MD) and Citicasters Company, 50 East Rivercenter Blvd., Suite 1200, Covington, KY 41011 (BPH-970529MC).

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

12. 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**