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January 15, 1999

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Federal Communications Commission  
Room 222, 1919 M Street, N.W.  
Washington, D.C. 20554

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JAN 15 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. 97-107  
RM-9023  
Potts Camp and Saltillo, Mississippi

Dear Ms. Salas:

Transmitted herewith, on behalf of Olvie E. Sisk, licensee of station WCNA(FM), Potts Camp, Mississippi, are an original and four copies of his "Request for Official Notice" in the above-referenced proceeding to reallocate Channel 240C3 from Potts Camp to Saltillo, Mississippi, and to modify the license of WCNA(FM) to specify the new community.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

  
Frank R. Jazzo  
Counsel for Olvie E. Sisk

Enclosures

No. of Copies rec'd 0+4  
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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED

JAN 15 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 97-107
FM Table of Allotments	)	RM-9023
(Potts Camp and Saltillo, MS)	)	

To: The Commission

**REQUEST FOR OFFICIAL NOTICE**

Olvie E. Sisk ("Sisk"), by counsel, herewith requests the Commission to take official notice of the facts and circumstances appearing in the record of and underlying its *Report and Order* in MM Docket No. 97-97, (Mt. Juliet, Belle Meade, Tennessee) 12 FCC Rcd. 10481 (1997), in considering Sisk's pending *Application for Review* in the above referenced proceeding. In support whereof the following is shown:

1. By *Report and Order*, 13 FCC Rcd. 11909 (1998), the Chief, Allocations Branch, denied Sisk's *Petition for Rulemaking*, seeking reallocation of FM Channel 240C3 from Potts Camp to Saltillo, Mississippi. The *Report and Order* rejected certain economic considerations advanced by Sisk in support of his *Petition*, holding that "economic issues are not relevant in the allotment or licensing context" and, thus, refused to consider the demonstrated lack of available advertising revenue to support a station at Potts Camp, Mississippi. *Id.* at Note 8. On July 24, 1998, Sisk filed his *Application for Review*, seeking the reversal of the *Report and Order* and the grant of his petition for rulemaking.

2. Sisk requests that the Commission take official notice of the facts and circumstances appearing in the record of MM Docket No. 97-97 and underlying its *Report and Order*, 12 FCC Rcd. 10481 (1997), in that proceeding in considering Sisk's contention that the Chief, Allocations Branch, erred in refusing to consider economic issues supporting the grant of his *Petition for Rulemaking*. See: *Application for Review* at paras. 8-9.

3. Sisk contends that the Commission's *Report and Order* in MM Docket No. 97-97 undermines the *Report and Order* in the instant proceeding, inasmuch as the Commission in MM Docket No. 97-97 permitted the removal of the sole, local transmission outlet from the larger community of Mt. Juliet to a smaller community, located in the Nashville Urbanized Area. The reallocation was approved by the Commission solely to relieve the petitioner of the necessity of incurring the substantial cost of changing the frequencies of two air navigation localizers, which would have served to resolve the adverse electromagnetic interference to air navigation that had required the termination of the operation of the station at Mt. Juliet.

4. Although nominally addressed as the case involving a technically deficient allotment, there was in fact no showing, whatsoever, that the channel at issue in MM Docket No. 97-97 could not have been implemented at Mt. Juliet, provided the frequencies of all four adversely impacted air navigation localizers had been modified. Indeed, the Commission acknowledged that the petitioner had agreed to bear the costs of changing the frequencies of two of the four localizers in conjunction with its proposed reallocation of the channel to the smaller, urbanized community. *Report and Order*, 12 FCC Rcd. 10481, Note 2 (1997); *Notice of Proposed Rulemaking* 12 FCC Rcd. 3201, Note 1 (1997). Missing from the record, however, is any evidence that the frequencies of the remaining two localizers could not also have been

modified, which would have allowed Mt. Juliet to retain its sole, local outlet. Accordingly, the *Report and Order* in MM Docket No. 97-97 reflects a decision to implement a reallocation that would not ordinarily have been deemed preferable under the Commission's policies,<sup>1</sup> solely on the basis of economic considerations.

5. Inasmuch as the Commission in MM Docket No. 97-97 implicitly gave primary consideration to economic concerns (the private financial interests of the petitioner in avoiding additional costs) in approving a reallocation which was not supported by any of its relevant allocation policies, the Commission may not lawfully ignore the substantial economic considerations presented by Sisk in support of his reallocation proposal, which its staff has determined "pursuant to the FM allotment priorities...would normally be favored." *Report and Order*, 13 FCC Rcd. 11909, 11912 (1998)

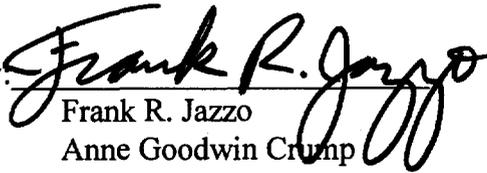
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<sup>1</sup> The reallocation of the sole, local outlet is usually not permitted, absent compelling public interest factors to offset the expectation of continued service. *Report and Order* 13 FCC Rcd. 11909, 11912 (1998) Likewise, the reallocation of a first local service from a larger to smaller community has never been considered preferable under the Commission's long established allocation criteria. Finally, reallocation of a first local service to a community located in an urbanized area is not permitted without significant scrutiny.

WHEREFORE, the Commission should take official notice of the facts and circumstances appearing in the record of MM Docket No. 97-97 and underlying its *Report and Order* in that proceeding in considering Sisk's pending *Application for Review*.

Respectfully submitted,

OLVIE E. SISK

By:   
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Anne Goodwin Crump

His Attorneys

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January 15, 1999

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**CERTIFICATE OF SERVICE**

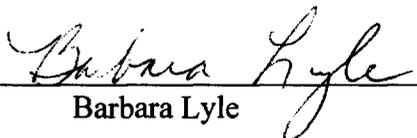
I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Request for Official Notice" was sent this 15th day of January, 1999, by first-class United States mail, postage prepaid to:

Mr. John A. Karousos\*  
Chief, Allocation Branch  
Mass Media Bureau  
Federal Communications Commission  
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Barbara Lyle