

FCC MAIL SECTION

Federal Communications Commission

DA 99-496

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-152
Table of Allotments,)	RM-9338
FM Broadcast Stations.)	
(Avon, North Carolina))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 3, 1999

Released: March 12, 1999

By the Chief, Allocations Branch:

1. At the request of Avon Broadcasting Company ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 15570 (1998), proposing the allotment of Channel 294A to Avon, North Carolina, as the community's first local aural service. Comments were filed by the petitioner and Coastal Broadcasting Company, Inc. ("Coastal"), licensee of Station WYND-FM, Hatteras, North Carolina. No other comments or reply comments were received.

2. The Notice requested that petitioner furnish information to demonstrate that Avon has the social, economic and cultural indicia to qualify as a community for allotment purposes and to show that these entities identify themselves with Avon. In response, petitioner states that Avon is a "distinct, identifiable town" on Hatteras Island, and, economically, is a tourist and fishing community, with a number of businesses being tourist related. It also states that Avon is isolated from other towns on Hatteras Island, being 25 miles from Salvo to the north and 15 miles from Buxton to the south, with nothing but uninhabited beach, wetlands of National Park Service lands between the communities. Petitioner states that, according to the Dare County Tax Assessor's Office, there are 97 businesses which identify solely with the town of Avon. It states that a large majority of these businesses are "small businesses which rely upon the residents of Avon for their existence and profit," but that several larger businesses have located in the community, such as Ace Hardware and Food Lion. Petitioner also points out that Avon has its own local post office and zip code and, like all the other towns on Hatteras Island, its own fire department. In addition, Avon is home to the Kinnakeet United Methodist Church and the Avon Worship Center. Petitioner states that there is no local media on Hatteras Island so that residents of Avon have no medium to turn to in times of natural disaster. It recognizes that there is a radio station licensed to the village of Hatteras, but it states that the village is located 40 highway miles north of Avon, and the station rebroadcasts the programming of its commonly owned Nags Head,

NC, station.¹

3. Coastal opposes the proposed allotment at Avon, questioning the need for an additional service to the area. It states that the area proposed to be served by the Avon station is a resort area which, for the most part, is sparsely populated except during the summer vacation season. Hatteras, Avon and Buxton, which was recently allotted two FM channels, are located in Dare County, which has a population of only 22,746 persons, according to the 1990 U.S. Census. Further, it states that the area is already served by six existing stations, in addition to two outstanding construction permits and one allotment that has mutually exclusive applicants. Thus, Coastal argues that it makes no economic sense to allot another channel to this already "saturated" market. In addition, Coastal questions petitioner's intention to apply for the channel, if allotted. It states that in 1987, Pamlico Sound Company, Inc. ("Pamlico"), proposed the allotment of a first local FM service at Hatteras but never built the station. Rather, in 1994, Pamlico sold the unbuilt construction permit to Coastal, which subsequently built Station WYND-FM. Coastal points out that Richard Hayes is the president of Pamlico and the petitioner in this proceeding is identified only through Mr. Hayes, with no information given as to the identity of Avon Broadcasting's principal or address. Finally, Coastal states that Avon is located in the middle of Cape Hatteras National Seashore and that there is only a limited amount of private land available for tower construction in the area. Therefore, it argues that the petitioner should also be required to demonstrate the availability of a viable tower location in this "environmentally protected location."

4. After careful consideration of the proposal before us, we find that petitioner has not sufficiently demonstrated that Avon is a "community" for allotment purposes. Where, as here, a locality is asserted to be a "community" and is not incorporated or listed in the U.S. Census, the petitioner must show that the place is a "geographically identifiable population grouping." To this end, petitioner was requested to provide further information demonstrating that Avon has social, economic, cultural or governmental indicia which identify themselves with Avon, citing Belview, Minnesota, 11 FCC Rcd 12793 (1996) and Lupton, Michigan, 11 FCC Rcd 143428 (1996). We have determined that Avon does have a post office, with no residential delivery service but post box service only. However, we have not been able to confirm the existence of an Avon Fire Department and, while the petitioner alleges that there are 97 businesses which identify themselves solely with Avon, it has failed to provide the names and addresses of any of these businesses. Further, petitioner states that the Kinnakeet United Methodist Church and Avon Worship Center are located in Avon but has provided no information as to any social or civic organizations which may exist in Avon, or any schools, libraries or other governmental services which are located within Avon. Petitioner does state that the Dare County Chamber of Commerce places the 1990 fulltime population of Avon at 710 persons but provides no documentation showing such a finding. Further, while petitioner states that according to the Dare County Tax Assessor's Office, Avon has 1,170 single family homes, it does not specify how

¹ The Commission recently allotted two Class A FM channels to Buxton, NC. See Report and Order, MM Dockets 98-144, 98-145, released January 19, 1999, Mimeo No. 99-155.

many of these homes are occupied by year-round residents and how many are vacation properties. As stated in Lupton supra, "[t]his is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question." We acknowledge that Avon can be located on a map and that the 1998 Rand McNally Commercial Atlas credits Avon with a fulltime population of 500 persons and a summer population of 1,500 persons. However, we believe that the record in this proceeding is insufficient to find that Avon is a "community" for allotment purposes and thus will not allot the requested channel.

5. Accordingly, IT IS ORDERED, That the petition for rule making filed by Avon Broadcasting Company (RM-9338) to allot Channel 294A to Avon, North Carolina, IS DENIED.

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

7. 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