

FCC MAIL SECTION

Federal Communications Commission

DA 99-2773

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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. 99-74
Table of Allotments,) RM-9367
FM Broadcast Stations.) RM-9715
(Bay Springs, Ellisville, and Sandersville,)
Mississippi))

REPORT AND ORDER
(Proceeding Terminated)

Adopted : December 9, 1999

Released: December 10, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making ("Notice") in this proceeding. 13 FCC Rcd 18844 (1999). Blakeney Communications, Inc. ("Blakeney") filed "Comments and Alternative Counterproposal" and "Reply Comments and Request for Expedited Action." For the reasons discussed below, we are granting Blakeney's counterproposal to provide a first local service to Sandersville, Mississippi.

2. At the request of Blakeney, licensee of Station WKZW(FM), Channel 232C2, Bay Springs, Mississippi, the Notice proposed reallocating Channel 232C2 from Bay Springs to Ellisville, Mississippi, as the latter community's first locally competitive aural transmission service, and modifying its authorization accordingly. This reallocation proposal was filed pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In its "Comments and Alternative Counterproposal," Blakeney counterproposed that if the Commission decided not to change Station WKZW's community of license to Ellisville, that Channel 232C2 instead be reallocated from Bay Springs to Sandersville, Mississippi, as that latter community's first local transmission service.²

3. In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² The Commission's Rules do not provide for the consideration of multiple alternative proposals by the same party in a single proceeding. Such a procedure is burdensome and, in some instances, prolongs our rulemaking proceedings. Nevertheless, this request is being treated as a counterproposal (Report No. 2358). No comments on the counterproposal have been submitted.

Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).³ In making this evaluation we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995). The Notice states that neither the existing allotment to Bay Springs, nor the proposed allotment to Ellisville would trigger allotment priorities (1) or (2) because there are no areas that would receive a first or second aural reception service. Likewise, the Notice asserts, since each community already has at least one aural transmission service in addition to Station WKZW, neither proposal would trigger priority (3), a first local transmission service. Therefore, the Notice concludes, the Bay Springs and Ellisville proposals must be compared under priority (4), other public interest matters.

4. The Notice stated that the staff's engineering studies demonstrated that reallocating 232C2 at Ellisville would result in Station WKZW placing a 70 dBu signal over 65.9 percent of the Hattiesburg, Mississippi, Urbanized Area. In such situations, the proponent of the reallocation must demonstrate that Ellisville is a separate, distinct community from Hattiesburg and that therefore Ellisville is entitled to a new service.⁴ Although Blakeney had submitted considerable information to demonstrate this independence, the Notice sought additional information concerning the number of Ellisville residents that may work in the Hattiesburg Urbanized Area as opposed to Ellisville, and also sought written statements from community leaders or residents of Ellisville attesting to their perception that Ellisville is a separate and distinct community from Hattiesburg.

5. Discussion. In its Comments, Blakeney provides additional information to support its position that Ellisville is independent of Hattiesburg. Blakeney submitted a labor market analysis showing that 83 percent of the people residing in Jones County, the county in which Ellisville is located, work in Jones County. The market analysis indicates that about 6.4 percent of Jones County persons commute to the Hattiesburg Urbanized Area. Further, Blakeney filed letters from community leaders that attest to the independence of Ellisville from Hattiesburg or any other community. Blakeney also points out that Ellisville has its own mayor and alderman, its own zip code and its own police and fire departments and water works, and is in a separate Congressional district, Circuit Court district, Chancery Court district, and Junior College district from Hattiesburg. Given all the record evidence concerning the independence of Ellisville from Hattiesburg, we conclude that a broadcast radio station licensed to Ellisville should not be considered to be a Hattiesburg station.

6. Under priority (4), one matter to be considered is the overall radio service to be offered by the Ellisville proposal as opposed to the radio service to be provided by the Bay Springs station. As presently licensed, Station WKZW provides service to 184,208 persons within its 1 mV/m contour. Operating from its intended site at Ellisville, Blakeney would serve 234,420 people. If we consider the presently licensed transmitter site of Station WKZW to be the existing site for Station WKZW, reallocating Channel 232C2 to Ellisville would result in a loss area of 35,967 people and a gain area of 86,179 people. This would produce a net gain of 50,212 people. The loss area is already served by at least five other full-time services, and is thus considered to be well served. The gain area contains a very small section of 116 people living in an area of 6.9 square kilometers that receives only four full-time services. The remainder of the gain area is

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (Allocations Br. 1995).

served by at least five other full-time services.

7. Reallocating Channel 232C2 from its presently licensed transmitter site at Bay Springs to Ellisville would increase the population served by Station WKZW.⁵ This population gain is attributable in part to the fact that Station WKZW would be serving a significant portion of the Hattiesburg Urbanized Area. As such, virtually all of the gain area as well as all of the loss area is already adequately served. The reallocation proposal would provide a competitive local service to Ellisville. Therefore, in considering the proposal to reallocate Channel 232C2 from Bay Springs to Ellisville, we must determine whether Ellisville has such an overwhelming need for a first competitive voice that it outweighs Bay Springs' need to retain its only nighttime service and its only competitive service. Blakeney argues that Ellisville is already a thriving and vibrant business center, but it is expected to undergo considerable growth with the advent of a new technology park and associated high technology businesses. Further, Blakeney observes that the Mississippi State Legislature has approved a \$4 million technology training center to be located in Ellisville and that experts forecast that the technology park and advanced technology training center will help create 10,000 to 15,000 new jobs for Ellisville and Jones County in the near future. Blakeney claims that because "explosive" growth for Ellisville is anticipated in the near future, its need for an additional media voice is immediate. Blakeney notes that Ellisville presently has only one local radio station and no local newspaper. Blakeney asserts that, as a result of the growth and development of Ellisville, many related issues will arise, such as the expansion and improvement of infrastructure, roads and schools, and that Ellisville needs a second local media in order to provide some diversity of viewpoint in the local coverage of these issues. Further, Blakeney argues that a new radio station is essential to provide a competitive source of advertising for local businesses as the growth of such businesses occurs.

8. In comparing the existing allotment of Channel 232C2 to Bay Springs to the proposed reallocation of that channel to Ellisville, we must consider whether Ellisville has such an overwhelming need for a first competitive radio service that it outweighs Bay Springs' need to retain its only nighttime service and its only competitive service. The population of Ellisville (3,634) is greater than the population of Bay Springs (1,729). Blakeney has submitted data indicating that the population of Ellisville might increase considerably over the next several years. Nevertheless, both the technology park and the advanced technology training center are still in the planning stages. Further, if and when these projects come to fruition, it is unclear to what extent the residential population of Ellisville will increase. Thus, Ellisville's future growth in population is somewhat speculative. We note that Ellisville already has one Class C2 FM station operating with 50 kilowatts to serve the needs of that community. In this instance, we do not believe that a second class C2 FM station for Ellisville would justify the withdrawal of the only nighttime service to Bay Springs and the resulting disruption to the public.

9. As the Notice in this proceeding explains, while the Commission has permitted stations to change their communities of license and leave a daytime only AM station in their former communities, this has generally been allowed where the proposed arrangement of allotments

⁵ The small section of the gain area that contains 116 persons who currently receive only four full-time services is a small consideration in this case as compared to the total gain area.

triggered priority (3), a first local transmission service in the new community.⁶ In this proceeding, the available alternative proposal for Sandersville provides a significantly greater public interest benefit than the Ellisville reallocation proposal. The Sandersville proposal removes the only local night-time transmission service and the only competitive aural transmission service from Bay Springs and leaves a daytime only AM station there, while providing a first local service to Sandersville. Sandersville is an incorporated community and qualifies as a community to which an FM channel can be allotted pursuant to Section 307(b) of the Communications Act of 1934, as amended. In brief, given the facts in this case and relevant Commission precedent, we cannot grant Blakeney's proposal to reallocate Channel 232C2 to Ellisville. Nevertheless, we can and shall grant Blakeney's proposal to reallocate Channel 232C2 to Sandersville.

10. Channel 232C2 can be allotted to Sandersville at a transmitter site located at coordinates 31-46-05 NL and 89-07-55 WL, consistent with the technical requirements of the Commission's Rules. This allotment requires a site restriction of 9.4 kilometers (5.8 miles) west of the city reference location.

11. 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 January 24, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Sandersville, Mississippi	232C2
Bay Springs, Mississippi	_____

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Blakeney Communications, Inc. for Station WKZW(FM), IS MODIFIED to specify operation on Channel 232C2, Sandersville, Mississippi, in lieu of its present operation on Channel 232C2 at Bay Springs, Mississippi, 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), specifying the new facility.

(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 1.13207 of the

⁶ See, e.g., Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352, 10355 (Allocations Branch 1995) (retention of only local night-time transmission service and first competitive aural transmission service do not outweigh a change of community proposal triggering a first local service under priority (3)).

Commission's Rules.

13. Pursuant to Commission Rule Sections 1.1104(1)(k) and (2) (k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Blakeney Communications, Inc., licensee of Station WKZW(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

14. IT IS FURTHER ORDERED, That this proceeding is terminated.

15. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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