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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 27 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Bethel Springs, Martin, South
Fulton, Tiptonville, and Trenton,
TN, Marble Hill and Scott City, MO)

MM DOCKET NO. 99-166

99-196

PETITION FOR ACCEPTANCE OF ADDITIONAL COMMENTS

Terry Hailey ("Hailey"), by his attorney, hereby submits a Petition for Acceptance of Additional Comments.

By the Comments attached, Hailey is seeking merely to have the Commission take official notice of a recently-adopted decision concerning the substance of the subject proceeding.

Respectfully submitted,

TERRY HAILEY

By Philip R. Hochberg
Philip R. Hochberg
His Attorney

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Amendment of Section 73.202(b))	MM DOCKET NO. 99-166
Table of Allotments)	RM-9619
FM Broadcast Stations)	RM-9874
(Bethel Springs, Martin, South Fulton, Tiptonville, and Trenton, TN, Marble Hill and Scott City, MO)		

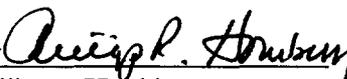
ADDITIONAL COMMENTS

Terry Hailey ("Hailey"), by his attorney, hereby submits Additional Comments in response to the Comments and Counterproposal submitted by Thunderbolt Broadcasting Company ("Thunderbolt") filed on July 12, 1999, regarding the above-cited proceeding.

These Comments merely seek to have the Commission take official notice of the final resolution of a related proceeding attempting to deprive Tiptonville of its Class C allotment. See attached Report and Order in MM Docket No. 96-204 (Petition for Reconsideration denied), released July 14, 2000.

Respectfully submitted,

TERRY HAILEY

By 
Philip R. Hochberg
His Attorney

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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. 96-204
Table of Allotments,)	RM-8876
FM Broadcast Stations.)	RM-9015
(Martin, Tiptonville and)	
Trenton, Tennessee)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 5, 2000

Released: July 14, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration of the Report and Order¹ in this proceeding filed by Thunderbolt Broadcasting Company ("Thunderbolt"), licensee of Station WCMT(FM), Channel 269A, Martin, Tennessee. Twin States Broadcasting, Inc. ("Twin States") has filed an Opposition to Thunderbolt's Petition for Reconsideration, and Thunderbolt has filed a Reply to Twin States's Opposition. For the reasons discussed below, we deny Thunderbolt's Petition for Reconsideration.

2. Background. The Notice of Proposed Rule Making ("NPRM")² in this proceeding was issued in response to Thunderbolt's petition for rule making proposing the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee (population 9,246),³ and the modification of its Station WCMT license accordingly (RM-8876). To accommodate the upgrade, Thunderbolt initially proposed the deletion of vacant Channel 267C3 at Tiptonville, Tennessee (population 2,149). Thunderbolt also filed a counterproposal proposing the allotment of Channel 247A in lieu of Channel 267C3 at Tiptonville to accommodate the allotment of Channel 267C3 at Martin, and the substitution of Channel 249C3 for Channel 248C3 at Station WWEZ(FM), Trenton, Tennessee, to accommodate the allotment of Channel 247A to Tiptonville (RM-9015). The Commission issued an Order to Show Cause⁴ directed to Radiocorp of Jackson, licensee of Station WWEZ, seeking comments on why its license should not be modified to specify operation of Channel 249C3 in lieu of Channel 248C3.

¹ 13 FCC Rcd 17767 (1998).

² 11 FCC Rcd 12695 (1996).

³ All population figures are taken from the U.S. Census.

⁴ 13 FCC Rcd 5164 (1998).

3. The Report and Order determined that the public interest would be served by retaining Channel 267C3 at Tiptonville, Tennessee, because it is Commission policy not to delete a channel in which an interest has been expressed and two parties had expressed their intention to file applications for Channel 267C3 at Tiptonville, Tennessee. Although the Report and Order recognized that Thunderbolt's alternate allotment plan requested the substitution of Channel 247A in lieu of Channel 267C3 at Tiptonville, only Thunderbolt had expressed an interest in a Class A allotment. Since two other interested parties had expressed their interest in a Class C3 allotment only, the Report and Order found no overriding public interest benefit for "downgrading" the allotment to accommodate Thunderbolt's proposed upgrade at Martin, Tennessee. Further, the Report and Order stated that the proposed Class C3 upgrade at Martin would provide new service to nearly 30,000 persons, but ruled that the upgrade did not outweigh downgrading an allotment that would provide a first local service at Tiptonville.

4. Petition for Reconsideration. In its Petition for Reconsideration, Thunderbolt argues that its alternate allotment plan should be adopted because it will provide a first local service to Tiptonville, while providing upgraded service to the Martin, Tennessee area. Thus, Thunderbolt asserts that its alternate allotment plan fulfills both priority (3) and priority (4) of the Commission's allotment priorities.⁵ Thunderbolt argues that Commission precedent requires the allotment of a lesser class channel to provide first local service to a community in lieu of a proposed higher class channel, when there is an expression of interest in the lesser class channel and there is no showing that the lesser class channel is insufficient to provide coverage to that community, citing Cottage Grove and Bend Oregon ("Cottage Grove"), 6 FCC Rcd 4208 (Allocations Br. 1991). Moreover, Thunderbolt asserts that the Commission treats an unactivated channel as a new allotment proposal when comparing alternate allotment proposals and that therefore, no equities or special considerations may be given to the fact that the channel at issue is a vacant, unactivated channel, citing Peshtigo and Balders, Wisconsin ("Peshtigo"), 10 FCC Rcd 3883, at para. 5 (Allocations Br. 1995).

5. Lastly, Thunderbolt cites Americus, Fort Valley and Smithville, Georgia ("Americus"), 6 FCC Rcd 942 (Allocations Br. 1991), as precedent for adopting its alternate allotment plan. In that case, a Class A channel was allotted instead of a Class C3 channel to provide Smithville with its first local service, where the allotment of the Class A channel also allowed for the upgrade of a station at Fort Valley and there was an expression of interest in the Class A channel at Smithville. Thunderbolt observes that, in the instant proceeding, there is a valid expression of interest in a Class A channel and the allotment of the Class A channel to Tiptonville will allow Station WCMT at Martin, Tennessee, to upgrade to Channel 267C3, while at the same time providing a first local service to Tiptonville. In this regard, Thunderbolt claims that allotting Channel 247A to Tiptonville to replace the current allotment of Channel 267C3 would not be "downgrading" the allotment, arguing that since there is no station at Tiptonville, there would no loss of service as between a Class C3 channel and a Class A channel at Tiptonville. See Bagdad and Chino Valley, Arizona

⁵ See the Commission's Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The FM allotment priorities set forth in the foregoing document 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 given to priorities (2) and (3).]

("Bagdad"), 11 CC Rcd 14459, at para.8 (1996) (channel reallocated from Bagdad to Chino Valley; no loss of service to Bagdad was found because the station was not yet built).

6. Discussion. We deny the Petition for Reconsideration. It is Commission policy not to delete a channel in which an interest has been expressed. See, e.g., Calhoun City, Mississippi, 11 FCC Rcd 7660 (Allocations Br. 1996) and Driscoll, et al., Texas, 10 FCC Rcd 6528 (Allocations Br. 1995). Since at least one party has expressed its intention to file an application for Channel 267C3 at Tiptonville⁶ and Channel 247A at Tiptonville, an allotment at Tiptonville must be retained. Further, we note that this proceeding does not involve the issue of first local service under Priority 3 of the FM allotment priorities, because Thunderbolt proposes to provide Tiptonville with a Class A first local service, while other parties propose retaining the existing Class C3 allotment at Tiptonville, which would also provide a first local service there. The issue is which community will have a Class C3 allotment and which community will have a Class A allotment.⁷ Engineering studies show that upgrading the Martin, Tennessee facility of Station WCMT-FM from Channel 269A to Channel 267C3 would result in a net gain of 24,317 people in an area of 2,289.2 square kilometers.⁸ Comparing the service provided by the proposed Channel 247A facility versus the service provided by a Channel 267C3 facility at Tiptonville, the Channel 267C3 facility would serve 60,463 more people and cover 2,286 more square kilometers than would a Channel 247A facility. Specifically, a Channel 267C3 station at Tiptonville, operating with maximum facilities, would serve 98,597 people and cover 4,802 square miles. Thus, a Channel 267C3 facility at Tiptonville would serve a much greater area and many more people than a station operating on Channel 267C3 at Martin. In this light, it is clear that retaining Channel 267C3 at Tiptonville would result in a population gain of 60,463, compared to a population gain of 24,317 if Channel 269A at Martin were upgraded to a Channel 267C3 FM allotment. Thus, under priority 4 of the FM allotment priorities, we have determined that Tiptonville should retain Channel 267C3.

7. We note that Thunderbolt has misinterpreted Peshtigo, supra, to the extent that Thunderbolt believes that the Commission generally treats an unactivated channel as a new allotment proposal when comparing allotment proposals. In Peshtigo, the Commission treated a request for an adjacent channel upgrade at Peshtigo as a request for first local service under priority 3, because of special circumstances, namely, the channel originally assigned to Peshtigo had never

⁶ Thunderbolt claims that Terry Hailey's expression of interest in applying for Channel 267C3 at Tiptonville was deficient because he did not state by the deadline for comments his present intention to build a station promptly, if his application were granted. Hailey made such a statement in his reply comments. In any event, the timely-filed expression of interest by Twin States Broadcasting, Inc. ("Twin States") included a statement that Twin States was interested in applying for the vacant allotment and also building a station if its application were granted. Therefore, even if Hailey's expression of interest were deemed to be deficient, Twin States' expression of interest could not be deemed deficient. One expression of interest is all that is required under Commission precedent to retain the allotment of a channel at Tiptonville.

⁷ The staff has determined that there is no alternate Class C3 allotment available for Tiptonville, and no other adjacent Class C3 channel upgrade available for Martin.

⁸ Neither proposal will result in service to areas that currently receive either none or one aural service, which would be considered under Priority 1 and 2 of the FM allotment priorities.

been activated and any prospective applicant was precluded from operation on the channel allotted to Peshtigo. Further, Cottage Grove and Americus, *supra*, are not applicable to this case because they did not involve downgrading any existing allotments. The case before us focuses upon Thunderbolt's attempts to upgrade its FM channel at Martin, Tennessee, and to either delete or downgrade an existing allotment, namely, Channel 267C3 at Tiptonville, Tennessee. Further, Bagdad, *supra*, is not applicable to this case because Bagdad found no loss of service would result from changing the community of license of an unbuilt station. The case before us involves the question of whether Channel 267C3 should remain allotted to Tiptonville or whether Channel 269A at Martin should be upgraded to Channel 267C3.

8. Accordingly, IT IS ORDERED That the Petition for Reconsideration filed by Thunderbolt Broadcasting Company IS DENIED.

9. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

10. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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

CERTIFICATE OF SERVICE

I, Dawn Whitehorne, a secretary in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, do hereby certify that a copy of the foregoing "Petition for Acceptance of Late-Filed Additional Comments" and "Comments" was sent this 27th day of July, 2000, by first-class United States mail, postage prepaid to:

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