

FCC MAIL ROOM

Federal Communications Commission DA 00-2481

2000 NOV -6 A 9:45 Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of RECEIVED Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Sparta and Buckhead, Georgia) MM Docket No. 00-101 RM-9885

REPORT AND ORDER (Proceeding Terminated)

Adopted: October 25, 2000

Released: November 3, 2000

By the Chief, Allocations Branch:

1. At the request of Barinowski Investment Company ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 9474 (2000), proposing the substitution of Channel 274C3 for Channel 274A, its reallocation from Sparta to Buckhead, Georgia, as the community's first local aural service, and the modification of Station WPMA(FM)'s license accordingly. Comments were filed by the petitioner. No other comments were received. For the reasons discussed below, we deny the proposed reallocation and license modification.

2. Petitioner's request was filed pursuant to Section 1.420(i) of the Commission's Rules which allows the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See, Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Community of License MO&O"), 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare 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 Allotment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982). In making the evaluation, we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

3. As stated in the Notice, Buckhead is incorporated and listed in the 1990 U.S. Census as having a population of 176 people, with its own post office and zip code. However, petitioner was requested to furnish additional demographic information in order to determine whether it qualified as a community for allotment purposes as we were unable to determine that it had any other indicia of community status beyond four churches and two restaurants. In response, petitioner states that Buckhead, with established geographic boundaries, is governed by a mayor and town council, has a town hall, volunteer fire department, two recreational parks, four churches, a Rotary Club, the Steffen Thomas Museum and Archives, a little league baseball team, its own cable television system and many

businesses.¹ Petitioner also states that children generally attend the Morgan County Public Schools but that a private school, The Buckhead Academy, is located in the community. Petitioner contends that Buckhead is experiencing a substantial increase in population due to the development of the 19,000 acre Lake Oconee. As a result of this growth, a new town charter was adopted by the Georgia House of Representatives and signed into law in 1999 by the Governor, and in 1998 was added to the list of communities in the National Flood Insurance Program in 1998. To accommodate the growth in Buckhead and the Lake Oconee region, we are told that Buckhead is also the proposed site for a new asphalt plant that will provide building materials. Therefore, petitioner submits that the 1990 U.S. Census population figure is no longer accurate. It notes that the Lake Oconee area is served by several telephone companies and the Pinnacle Telephone Company, Inc., publishes the telephone book for the region.²

4. Petitioner was also requested to provide further information to demonstrate that the public interest would be better served by providing Buckhead with its first local aural service by removing Sparta's sole local aural service. In response, petitioner states that Channel 274 cannot be upgraded to a Class C3 at Sparta. Further, as a Class A, the station presently provides 60 dBu service to 9,433 people within a 1,307 square mile area but as a Class C3, licensed to Buckhead, petitioner states that the station could provide 60 dBu service to 15,203 people within a 3,904 square mile area. The petitioner was also requested to provide information concerning the population and reception services within the loss and gain areas which will occur if Channel 274C3 is reallocated. Petitioner did not respond with a showing of what areas would lose or gain service, the population within these areas or the current reception services available within these areas. It only states that Sparta and areas north and west of the community will continue to be within Station WPMA's 60 dBu contour and that the small area which will lose service are already well served by Atlanta AM Stations WSB and WGST, Milledgeville AM Stations WMVG and WKGQ and FM Stations WLRR, WKZR and WGUR, Sanderson AM Station WSNT and Warrenton FM Station WRFN.

Discussion

5. Based on the record before us, and in accordance with the Commission's allotment priorities and policies, we find that the public interest would not be served by substituting Channel 274C3 for Channel 274A, reallocating Channel 274C3 from Sparta to Buckhead, and modifying the license of Station WPMA accordingly. In Change of Community MO&O, *supra*, at 7097, the Commission stated that the public has a legitimate expectation that existing service, regardless of whether it is a transmission or reception service, will continue and that this expectation is a factor to be weighed independently against the benefits that may result from the reallocation. Further, while stating that a

¹ The businesses located in Buckhead include Blue Springs Marina, Buckhead Woodcrafters and Stained Glass, Diane's Businesses Service, Buckhead Brokers Independent, Images by Jennifer Queen, HSI/My Business, A Step Ahead, Ltd., Buckhead Cable Co., Bonners Triple B, Buckhead Grocery, Saffold Dairy, Jimmy's Body Shop, Inc., Goldsmith Bookeeping Services, and Advanced Electrical Contractors.

² The telephone book includes listings for Buckhead, Eatonton, Greensboro, Madison, Rutledge, Union Point and White Plains.

prohibition on the removal of a community's sole local aural service is justified as presumptively disserving the public interest, we went on to say that requests to waive this prohibition would be considered in the "rare circumstances" where the removal could serve the public interest. Petitioner's contention notwithstanding, we continue to find that the reallocation would deprive Sparta of its sole local aural service. While a construction permit has been awarded to noncommercial educational Station WJDS, it has not as yet begun operations and its permit does not expire until November, 2002. In addition, the Commission has stated that with regard to change of community requests, neither a vacant allotment nor a construction permit can be considered as a substitute for an operating station. Therefore, the situation before us triggers the same allotment priority, that is the provision of a first local aural service to either Sparta or Buckhead.³

6. In analyzing the proposal, a staff engineering study finds that the removal of Channel 274A from Sparta will create a loss area of 1,365 square kilometers containing 11,246 people and that no white area (no fulltime aural service) will be created by the removal of Channel 274A from Sparta. However, the removal of the channel will result in 7,481 people becoming less well served. Specifically, 471 people within a 120 square kilometer area receiving only one fulltime aural service (gray area), 3,724 people within a 277 square kilometer area receiving only two fulltime aural services, 2,189 people within a 231 square kilometer area receiving only three aural services, and 1,097 people within a 267 square kilometer area receiving only four fulltime aural services. If Channel 274, as a Class C3, is reallocated to Buckhead, the station will realize a gain area of 3,654 square kilometers containing 48,903 people. Further, the study shows that as a Buckhead allotment, 43,115 people are already well-served with five or more fulltime reception services and no service will be provided to any white area. The allotment will, however, increase service to 5,788 people who are presently underserved. The reallocation will eliminate a gray area containing 223 people within a 68 square kilometer area, provide a third fulltime service to 1,159 people within a 191 square kilometer area, provide a fourth aural service of 2,423 people within a 68 square kilometer area and provide a fifth such service to 1,983 people within a 90 square kilometer area.

7. In considering the above information, we would allot Channel 274A to Sparta rather than Channel 274C3 to Buckhead. In this case, neither proposal would result in the provision of a first fulltime aural reception service (priority 1) but both would provide a second fulltime aural reception service as well as a first local aural transmission service (priorities 2 and 3). Comparing the two proposals under the Commission's allotment priorities, Channel 274A at Sparta would provide a second fulltime reception service to a greater number of people (471 vs. 223) and provide the more populous community with its first local aural transmission service (1,710 vs. 176).^{4 5} We recognize

³ The Commission's allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

⁴ Petitioner contends that the 1990 U.S. Census does not accurately reflect Buckhead's current population because of the significant growth which has occurred because of its location near Lake Oconee. However, it provides no population figure nor the source for any changed population figure. Absent compelling information to the contrary, the Commission relies on the most current U.S. Census figures for community population statistics. See, Blanchard, Louisiana and Stephens, Arkansas, 8 FCC Rcd 7083 (1993), recon. denied 10 FCC Rcd 9828 at fn. 12 (1995) (absent an alternative

that the allotment of Channel 274C3 could enable Station WPMA to provide reception service to a greater number of people than it presently can as a Class A station at Sparta. However, the determining factor in comparing competing proposals representing first local services is the size of the community and not the potential population within the projected 60 dBu contour. See, Calico Rock and Leslie, Arkansas, 12 FCC Rcd 20174 (1997).

8. Accordingly, IT IS ORDERED, That the petition for rule making filed by Barinowski Investment Company (RM-9885) to substitute Channel 274C3 for Channel 274A at Sparta, Georgia, reallocate Channel 274C3 to Buckhead, Georgia, and modify the license of Station WPMA accordingly, IS DENIED.

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

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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Chief, Allocations Branch
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Mass Media Bureau

authoritative source of population data, we will continue to rely on Census figures in the implementation of our rules).

⁵ See, Potts Camp and Saltillo, Mississippi, 13 FCC Rcd 11909 (1998) and Tuscola and Clio, Michigan, 15 FCC Rcd 8958 (2000) (denied proposal to reallocate sole local aural service from smaller community to larger community where it would be a first local aural service).