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

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In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Sparta and Buckhead, Georgia))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 00-101

RM-9885

To Chief, Mass Media Bureau

PETITION FOR RECONSIDERATION

Barinowski Investment Company, LP (hereafter "Petitioner"), by its attorney and pursuant to the provisions of Section 1.429¹ of the Commission's Rules and Regulations hereby respectfully requests that the Commission reconsider the action of the Chief, Allocations Branch, Mass Media Bureau in the above-captioned proceeding denying the substitution of Channel 274C3 for Channel 274A, its reallocation from Sparta to Buckhead, Georgia, as that community's first local aural service, and the modification of Station WPMA(FM)'s license in conformity therewith, as memorialized in the Report And Order, released November 3, 2000.² In support of this request, the following is respectfully submitted for the consideration of the Commission.

¹ 47 CFR 1.429.

² DA 00-2481, released November 3, 2000.

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List A B C D E

I. BACKGROUND

1. Petitioner is the licensee of commercial broadcast station WPMA (FM), Sparta, Georgia, which utilizes the present FM Channel 274A allotment.

Petitioner submitted the petition for rule making in this proceeding and timely filed comments in support of its proposal.

2. In the Report And Order, the Allocations Branch (hereafter the "Staff") recognized the merit in the proposal, but was hesitant to allow the upgrade and reallocation of Channel 274A from Sparta, Georgia, to Buckhead, Georgia based, in part, on the following rationale:

...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 stations. 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. *See the Report and Order at page 3, paragraph 5.*

The Staff determined that neither allotment proposal would provide a first fulltime aural transmission service, that both would provide a second fulltime aural transmission service, and that both would be a first local aural transmission service to the proposed communities of Sparta and Buckhead. While the Buckhead proposal "...would enable Station WPMA to provide reception service to a greater number of people than it presently can as a Class A station at Sparta..." the slightly larger size of the community of Sparta was the deciding

factor since "...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."

II. DUE TO CHANGED CIRCUMSTANCES, BUCKHEAD SHOULD BE CONSIDERED THE PREFERRED COMMUNITY UNDER THE COMMISSION'S ALLOTMENT PRIORITIES.

3. On November 15, 2000, after the release of the Report And Order, noncommercial, educational FM station WJDS, Sparta, Georgia, began full broadcast operation. Exhibit A hereto is a copy of the license application for WJDS that was electronically filed with the Commission on that date.³ Accordingly, WPMA(FM), operating on the subject FM channel 274A allotment, now represents one of two local aural services at Sparta, Georgia. Buckhead continues to be without a first local aural service.

4. As a result of the start of operation by WJDS, the Commission should reconsider the Staff's action in the Report And Order, substitute FM channel 274C3 for FM Channel 274A, and reallocate that channel and WPMA(FM) to Buckhead, Georgia, as that community's first local aural broadcast service. Such an action is required based upon the FM allotment priorities set forth in Revision of FM Allotment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).

5. In FM Priorities, the Commission determined that in considering competing proposals such as the ones at hand the applicable allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first

³ FCC file BLED-20001115AAE.

local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight in assessing the merits of the competing proposals, but to the extent that one proposal meets both (2) and (3), while the other meets only (2), the first proposal prevails. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1990). At the point WJDS commenced operation, the Buckhead proposal met the criteria for priorities (2) and (3), as well as adding a additional public interest benefit under priority (4) of a substantially increased service area for WPMA based on a Class C-3 allotment and power. On the other hand, retaining the Class A allotment 274 at Sparta, Georgia meets only the criteria for priority (2), with WPMA having a significantly smaller service area as a Class A facility at Sparta.

III. THIS PETITION COMPLIES WITH THE PROCEDURAL REQUIREMENTS FOUND IN SECTION 1.429 FOR RECONSIDERATION OF A REPORT AND ORDER IN AN FM ALLOTMENT RULEMAKING PROCEEDING.

6. Section 1.429 of the Commission's Rules and Regulations governs the filing of petitions seeking reconsideration of an action in a proceeding conducted in connection with Subpart C rulemakings. An interested person, such as Petitioner as the proponent of the rulemaking, may petition for reconsideration of an action based on facts which have not previously been presented to the Commission where:

- (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

- (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or
- (3) The Commission determines that consideration of the facts relied on is required in the public interest.

In the case at hand, the commencement of operation by WJDS, Sparta, Georgia, on November 15, 2000, after the release date of the Report And Order and well after the deadline for the submission of comments in this proceeding, clearly allows the subject petition to meet all three of the criteria. Thus, the subject Petition is timely filed⁴ and should be given full consideration and adopted by the Commission.

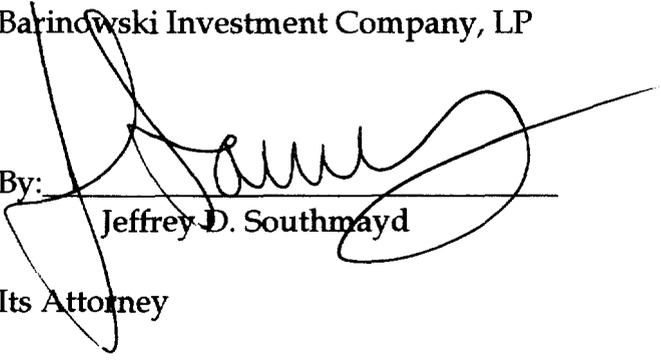
IV. CONCLUSION.

Wherefore, Barinowski Investment Company, LP respectfully requests that the Commission reconsider the Staff action in the Report And Order denying its request for the substitution of Channel 274C3 for Channel 274A, its reallocation from Sparta to Buckhead, Georgia, as that community's first local aural service, the modification of the broadcast license for station WPMA to Channel 274C3, and adopt said proposal in its entirety as consistent with the public interest and the policy enunciated in FM Priorities. Upon such action, Petitioner will promptly file an application to modify the license for WPMA(FM) to utilize the Channel 274C3 allotment at Buckhead, Georgia.

⁴ This Petition is filed within 30 days of the November 3, 2000 release date of the Report and Order.

Respectfully submitted,

Barinowski Investment Company, LP

By: 

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Its Attorney

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Date: November 21, 2000

**EXHIBIT A
PETITION FOR RECONSIDERATION
MM DOCKET NO. 00-101**



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Application Search Details

File Number:	BLED-20001115AAE
Call Sign:	WJDS
Facility Id:	92979
Applicant Name:	AUGUSTA RADIO FELLOWSHIP INSTITUTE, INC.
Frequency:	88.7
Channel:	204
Community of License:	SPARTA, GA
Application Type:	LICENSE TO COVER
Status:	ACCEPTED FOR FILING
Status Date:	11/16/2000
Expiration Date:	
Application Service:	FM
Disposed Date:	
Accepted Date:	11/16/2000
Last Public Notice:	11/20/2000
Last Report Number:	24864
Authorization	Authorization not available
Legal Actions	View Legal Actions



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REPORT NO. 24864

Broadcast Applications

11/20/2000

<u>STATE FILE NUMBER</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>NATURE OF APPLICATION</u>
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TV TRANSLATOR OR LPTV STATION APPLICATIONS FOR ASSIGNMENT OF PERMIT ACCEPTED FOR FILING

TN	BAPTTL-20001020ACW	W62CK 15333 CHAN-62	DAMON MERARI TN, ACTON	Voluntary Assignment of Construction Permit From: DAMON MERARI To: MS COMMUNICATIONS, LLC (Form 345)
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TX	BAPTTL-20001025ABG	KLDX-LP 55137 CHAN-57	TIGER EYE BROADCASTING CORPORATION TX, LAREDO	Voluntary Assignment of Construction Permit From: TIGER EYE BROADCASTING CORPORATION To: G & M MEDIA PARTNERS, LLC (Form 345)
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AM STATION APPLICATIONS FOR EXPERIMENTAL STATION ACCEPTED FOR FILING

GA	BPEX-20000828APT	NEW 127291	GA, EATONTON	EXPERIMENTAL BROADCASTING STATION
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DIGITAL TV APPLICATIONS FOR LICENSE TO COVER ACCEPTED FOR FILING

NH	BLEDT-20001109AAU	WENH-DT 69237 CHAN-57	UNIVERSITY OF NEW HAMPSHIRE NH, DURHAM	License to cover construction permit no: BPEDT-19990628KE, callsign WENH-TV.
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FM STATION APPLICATIONS FOR LICENSE TO COVER ACCEPTED FOR FILING

GA	BLED-20001115AAE	WJDS 92979 88.7 MHZ	AUGUSTA RADIO FELLOWSHIP INSTITUTE, INC. GA, SPARTA	Lic. to cover
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