

FCC MAIL ROOM

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, |) | MM Docket No. 97-188 |
| FM Broadcast Stations. |) | RM-9137 |
| (Macon and Walnut Grove, Mississippi) ¹ |) | |

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 24, 2001

Released: January 26, 2001

By the Chief, Allocations Branch::

1. The Allocations Branch has before it a Petition for Reconsideration filed by Colon Johnston directed to the Report and Order in this proceeding, 13 FCC Rcd 11061 (1998).² For the reasons discussed below, we are granting the Petition for Reconsideration to the extent of allotting Channel 244C2 to Walnut Grove, Mississippi.

Background

2. At the request of Team Broadcasting, Inc., the Notice of Proposed Rule Making proposed the allotment of Channel 244A to Macon, Mississippi. 12 FCC Rcd 23 (1997). After a technical review, it was determined that this proposal was in conflict with a one-step upgrade application for Station WKXX, Channel 244C3, Pine Hill, Alabama, to specify operation on Channel 244C2 (File No. BPH-970625IE). In view of the fact that this application was on file by the comment date in this proceeding, the Report and Order allotted alternate Channel 263A to Macon, Mississippi.³ On the other hand, it was determined that the Colon Johnston proposal for a Channel 244C2 allotment at Walnut Grove, Mississippi, was unacceptable due to a short-spacing to reference coordinates for the Channel 244C2 allotment at Pine Hill, Alabama, as well as the pending application by Station WKXX for Channel 244C2 at Pine Hill (File No. BMPH-970625IE).

3. The Colon Johnston proposal for a Channel 244C2 allotment at Walnut Grove was filed prior

¹ Walnut Grove, Mississippi, has been added to the caption.

² Metro Radio, Inc. ("Metro Radio") also filed a Withdrawal of Expression of Interest and Petition for Deletion of Allotment.

³ Prior to the adoption of the Report and Order in this proceeding, Team Broadcasting, Inc. withdrew its expression of interest in applying for the proposed Macon allotment. However, Metro Radio filed timely comments supporting a Macon allotment and expressing an interest in applying for this allotment. As such, there was, at the time of the Report and Order, a requisite expression of interest and Channel 263A was allotted on that basis.

to the Station WKXK one-step upgrade application and prior to the comment date in this proceeding. As such, we agree that it was entitled to comparative consideration along with the underlying proposal for Channel 244A at Macon and the Station WKXK one-step application for a Channel 244C2 upgrade at Pine Hill. See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part 8 FCC Rcd 4743 (1993).

4. At this juncture, it is necessary to compare the proposed Channel 244C2 upgrade for Station WKXK at Pine Hill against the proposed Channel 244C2 new allotment at Walnut Grove. In making this comparison, we use the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 4 FCC 2d 88 (1988).⁴ We are allotting Channel 244C2 to Walnut Grove, Mississippi.⁵ This will provide Walnut Grove with a first local service under Priority 3, while the Station WKXK proposal will only upgrade an existing facility which is considered under Priority 4. See also Benton, Clarksville, Dardanelle, El Dorado, Hampton, Harrison, Huntsville, Mena, Ozark and Sherwood, Arkansas, Homer Louisiana, Sallisaw and Vinita, Oklahoma, Hooks and Gilgord, Texas, 2 FCC Rcd 1963 (1987). We also note that the proposed Channel 244C2 allotment at Walnut Grove will serve 113,302 persons compared to the Station WKXK upgrade which would result in a net service gain to 26,894 persons.

Macon, Mississippi

5. The Report and Order in this proceeding was released on May 1, 1998. In a separate context, Radio South, Inc., licensee of Station WLXY, Channel 264C3, Northport, Alabama, filed Comments on October 10, 2000. In its Comments, Radio South refers to the Withdrawal of Expression of Interest and Petition for Deletion of Allotment filed by Metro Radio on September 30, 1999, directed to the Channel 263A allotment at Macon. Radio South supports deletion of this allotment from the FM Table of Allotments and removal from the FM Broadcast Auction Public Notice released September 25, 2000. Radio South also notes that this deletion of the Channel 263A allotment at Macon would remove a conflict with its one-step application to upgrade Station WLXY to specify operation on Channel 263C1 (File No. BPH-19991012AAG).

6. We will not delete the Channel 263A allotment at Macon, Mississippi or otherwise set aside our action allotting this channel on the basis of the Metro Radio pleading filed 16 months after the release of the Report and Order. In essence, this pleading is an untimely petition for reconsideration that should have been filed within 30 days of publication of the Report and Order in the Federal Register. See e.g. Reuters Ltd. v. FCC, 781 F.2d 946 (D.C. Cir. 1986); Mary R. Kupris, 5 FCC Rcd 5142 (1990); Oildale, California, 6 FCC Rcd 5858 (1991). The appropriate procedure would be for either Radio South or Metro Radio to file a petition for rule making requesting deletion of this allotment and setting forth the public interest reasons for the deletion. This would also afford interested parties the opportunity to comment on the proposed deletion. We recognize that Metro Radio has withdrawn its expression of interest in this allotment and that this proceeding is open due to the filing of a Petition for Reconsideration by Colon Johnson. However, the Johnson Petition for Reconsideration only concerns our action denying his Channel 244C2 proposal at Walnut Grove and does not contest our action allotting Channel 263A to Macon. As such, there is no basis to revisit the Macon allotment in the context of the

⁴ The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁵ The reference coordinates for the Channel 244C2 allotment at Walnut Grove, Mississippi, are 32-42-50 and 89-23-48.

Johnson Petition for Reconsideration.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and ® 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 March 13, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

| <u>Community</u> | <u>Channel No.</u> |
|---------------------------|--------------------|
| Walnut Grove, Mississippi | 244C2 |

8. A filing window for Channel 24C2 at Walnut Grove, Mississippi, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

9. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by Colon Johnston IS GRANTED to the extent indicated above.

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

11. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177. Questions related to the auction process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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