

FCC MAIL ROOM

**Before the
Federal Communications Commission
Washington, D.C. 20554**

2001 JAN 23 P 4: 06

In the Matter of)
)
)
Amendment of Section 73.2029b),)
Table of Allotments,)
FM Broadcast Stations.)
(Sparta and Buckhead, Georgia))
)

MM Docket No. 00-101
RM-9885

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MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 17, 2001

Released: January 19, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration filed by Barinoski Investment Company ("Barinoski Investment") directed to the Report and Order in this proceeding. DA 00-2481, released November 3, 2000. For the reasons discussed below, we grant the Petition for Reconsideration.

Background

2. At the request of Barinoski Investment, licensee of Station WPMA, Channel 274, Sparta, Georgia, the Notice of Proposed Rule Making proposed the substitution of Channel 274C3 for Channel 274A at Sparta, reallocation of Channel 274C3 to Buckhead, Georgia, and modification of the Station WPMA license to specify operation on Channel 274C3 at Buckhead. 15 FCC Rcd 9474 (2000). This request was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station 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'), 4 FCC Rcd 4870 (1989), recon. granted in part 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 Priorities and Procedures. 90 FCC 2d 88 (1982).¹ In making this evaluation, we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

3. In the Report and Order, we denied the proposed reallocation and upgrade. The basis of that denial was that we would be depriving Sparta of its sole local service. In this regard, we recognized that a construction permit had been granted to operate noncommercial educational Station WJDS in Sparta. However, neither a vacant allotment nor an unbuilt construction permit can be considered a substitute for an operating station. In this regard, the Report and Order specifically noted that Station WJDS had not yet

¹ 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).

commenced operation.

4. In its Petition for Reconsideration, Barinoski Investment states that on November 15, 2000, Station WJDS commenced operation in Sparta, thereby obviating the basis for the denial of the proposed reallocation to Buckhead. Station WJDS commenced operation twelve days after the release of the Report and Order in this proceeding. In regard to a petition for reconsideration relying on facts not previously presented to the Commission, Section 1.429(b)(1) of the Rules permits the consideration of such a petition if the fact occurred after the last opportunity to present this fact to the Commission. We also note that Section 1.429(b)(3) permits consideration of the petition for reconsideration if we determine that its consideration is required by the public interest.

5. We grant the Petition for Reconsideration. In doing so, we are substituting Channel 274C3 for Channel 274A at Sparta, Georgia, reallocating Channel 274C3 to Buckhead, Georgia, and are modifying the license of Station WPMA to specify operation on Channel 274C3 at Buckhead.² This will result in a preferential arrangement of allotments by Sparta and Buckhead both having local services. As a result of the upgrade, Station WPMA will serve an additional area of 3,654 square kilometers containing 48,903 persons.

6. In taking this action, we realize that there will be a loss of service to an area of 1,265 square kilometers containing 11,246 persons. In this loss area, 471 persons would, as a result of the reallocation, have only one fulltime aural service (gray area). Similarly, 3,724 persons will receive only two fulltime aural services, 2,189 persons will receive three aural services, and 1,097 persons will receive only four fulltime aural services.³ As stated above, Station WJDS has commenced operation in Sparta. The Station WJDS operation will reduce the population receiving only one fulltime aural service to 114 persons and the population receiving only two fulltime aural services to 1,141 persons. Balanced against these losses, the proposed reallocation and upgrade will eliminate an existing gray area containing 223 persons, as well as providing a third fulltime aural service to 1,159 persons, a fourth fulltime aural service to 2,423 persons, and a fifth fulltime aural service to 1,983 persons. While we are concerned with the availability of third, fourth and fifth fulltime aural services, the creation or elimination of gray area is specifically identified by the Commission as FM allotment Priority 2. In this instance, we consider the population of 114 persons within the gray area to be de minimis in light of the overall population gain, the elimination of a gray area containing 223 persons and the provision of local service to Buckhead. See Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas, 10 FCC Rcd 9360 (1995).

7. Accordingly, pursuant the authority contained 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 March 9, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

² The reference coordinates for the Channel 274C3 allotment at Buckhead, Georgia, are 33-31-40 and 83-18-45.

³ The Commission has considered five or more reception services to be "abundant." Family Broadcasting Group, 53 RR2d 662 (Rev. Bd. 1983), rev. denied FCC 83-559 (Comm'n Nov. 29, 1983); see also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 91995).

<u>Community</u>	<u>Channel No.</u>
Buckhead, Georgia	274C3
Sparta, Georgia	-----

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Barinowski Investment Company for station WPMA, Channel 274A, Sparta, Georgia, IS MODIFIED, to specify operation on Channel 274C3 at Buckhead, Georgia, subject to the following conditions:

- (a) Within 90 days of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.
- (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 1.1307 of the Commission's Rules.

9. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment and/or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensee is required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade and change in community of license.

10. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by Barinoski Investment Company IS GRANTED to the extent indicated above.

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

12. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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