

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-169
Table of Allotments,)	RM-9953
FM Broadcast Stations.)	RM-10160
(Oswego and Granby, New York))	
)	

To: Chief, Allocations Branch

COMMENTS OF GALAXY COMMUNICATIONS, L.P.

Galaxy Communications, L.P. ("Galaxy"), licensee of radio station WTKV(FM), Oswego, New York, by its attorneys, hereby submits these comments in response to the Public Notice (Report No. 2491) released by the Consumer Information Bureau on July 2, 2001, seeking comments on the minor modification application filed on November 6, 2000, by Cram Communications, LLC, regarding Station WXBB(FM), DeRuyter, New York.¹ These timely comments are filed in support of Galaxy's above-referenced Petition for Rule Making (the "Petition") requesting amendment of Section 73.202(b), the FM Table of Allotments, to reallocate Channel 288A from Oswego to Granby, New York and to modify WTKV's license to specify Granby as its community of license.

As explained in Galaxy's Reply Comments of November 21, 2000, the public interest would be best served by adopting the Petition and dismissing Clear Channel's minor change

¹ The Station, which formerly operated under call signs WVOA(FM) and WVOQ(FM), is now owned by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). For convenience, Galaxy will refer to Clear Channel as the licensee of WXBB.

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application, which would necessitate imposing a site restriction on Galaxy or adopting a new set of reference coordinates for the Petition. If, however, the Commission believes that the public interest would be served by accommodating Clear Channel's modification application, it either should require Clear Channel to amend the application to specify a new transmitter site that is fully spaced to the reference coordinates specified in the Petition, or accept new coordinates for both Clear Channel's transmitter site change and the Granby reference point.

Galaxy has proposed reallocating Channel 288A from Oswego to Granby and modifying the license of WTKV to specify those new facilities. Adopting the Petition would result in a preferential arrangement of the allotments by bringing Granby, a community of approximately 7,200 persons, its first local aural transmission service, and it would not deprive Oswego of its sole full service local transmission service. *See Revision of FM Assignment and Policies and Procedures*, 90 FCC Rcd 2d 88 (1982). Galaxy's proposal also would be fully spaced to all domestic allocations and licensed facilities, would comply with all of the Commission's technical rules and would present numerous public interest benefits, including reducing an international short spacing, and increasing service to almost 140,000 persons with a resulting loss area of barely more than 2,000 persons, all of whom would remain well-served.

The Commission need not comparatively consider Clear Channel's modification application with the Petition because, as Clear Channel itself concedes, its application does not propose an alternative and mutually exclusive allotment or set of allotments to Galaxy's Petition, and is therefore not a counterproposal. *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931 (1990). Clear Channel does not propose any change to the Table of Allotments. Rather, Clear Channel's modification

application is merely contingent upon Galaxy's proposed reallocation. In other similar cases, the Commission has refused to consider the asserted counterproposal. *De Ridder, Louisiana*, 14 FCC Rcd 11786 and n.1 (Allocations Branch 1999); *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181 (Allocations Branch 1997). The Commission should follow that precedent here and dismiss the minor modification application.

Even if the Commission were to comparatively consider Clear Channel's minor modification application with Galaxy's Petition, the public interest would be served by granting the Petition, which serves allotment Priority 3 -- first local service -- instead of the application which merely proposes an increase in service area for WXBB that is considered just another generalized public interest factor under Priority 4. The provision of first local service is comparatively preferable under Section 307(b) of the Communications Act to a simple minor modification application. Indeed, the Commission has emphasized that "an application is considered, in the absence of a showing to the contrary, to represent no more than the applicant's preference for a particular transmitter site. Accommodating an applicant's preference provides minimal public interest benefits, and thus *virtually any conflicting proposal involving a net public interest benefit will be preferred.*" *Amendment of the Commission's Rules To Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 at ¶¶ 17-18 (1993).

Any public interest benefits proffered by Clear Channel's proposed transmitter site change are outweighed by technical and legal deficiencies in its application. Most of the population gains for WXBB touted by Clear Channel would occur, as its own engineering exhibit demonstrates, in metropolitan areas (Syracuse, Rome and Utica) that already are extremely well-served. Furthermore, Clear Channel's proposed transmitter move would create a large loss area

of over 40,000 persons (approximately 19% of the asserted population gain). The Commission generally disfavors large service loss areas because “the public has a legitimate expectation that existing service will continue. . .” *DeRuyter and Chittenango, New York, Notice of Proposed Rulemaking*, 13 FCC Rcd 4332 (1998).² Significantly, Clear Channel’s move would create an underserved area of 1,621 persons to the south of DeRuyter. Thus, the proposal is contrary to the Commission’s long-standing policy disfavoring the creation of underserved areas. *Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order*, 5 FCC Rcd 7094 (1990). Clear Channel’s proposal also would neutralize the lessening of the short-spacing between WTKV and Canadian Channel 289B, Kingston Ontario, that would result from the implementation of Galaxy’s Petition, would result in a transmitter site for WXBB that would not permit the station to provide line of sight coverage to all of DeRuyter as required by Section 73.315 of the Commission’s rules, and would nearly double the existing eight kilometer short-spacing between WXBB and WBBS(FM), Fulton, New York, with an obvious increase in the actual interference between the stations.³

If the Commission concludes that despite the superiority of Galaxy’s proposal under the Commission’s allotment priorities, the public interest would be served by attempting to accommodate both parties, it should require Clear Channel to amend its minor modification

² In this case, in which WXBB had requested a change in community of license, WXBB eventually withdrew its support for the petition for rulemaking, which would have removed DeRuyter’s sole local transmission service, in the face of withering opposition. WXBB now seeks to do by modification what it could not do by rulemaking only two years ago.

³ WBBS is also owned by Clear Channel. Obviously, it is not in Clear Channel’s interest to defend the rights of WBBS’s listeners and object to the proposed doubling of the short-spacing.

application to select a transmitter site that is fully spaced to Galaxy's specified reference coordinates. The Commission prefers to allot channels with the fewest possible site restrictions. *Vacaville and Middleton, California*, 4 FCC Rcd 8315 (1989), *recon. denied*, 6 FCC Rcd 143 (1991). Because Clear Channel's application is inconsistent with this policy, would elevate to decisional status Clear Channel's mere private interest in retaining its chosen transmitter site, while imposing an unnecessary site restriction on Galaxy, and suffers from numerous other public interest deficiencies, the Commission should require that Clear Channel modify its application to comply with the Commission's rules and policies.⁴

Alternatively, if the Commission determines that the public interest would be served by adopting some other resolution to the conflict between Galaxy's Petition and Clear Channel's application, it should adopt the proposal set forth by Galaxy in its November 21, 2000 Reply Comments, where it proposed reference coordinates of 43-17-44, 76-26-16 and a corresponding Clear Channel move of WXBB's transmitter site to 42-56-03, 75-45-18. That move would permit both proposals to be implemented with no site restriction and significantly greater public interest benefits than those proposed by Clear Channel in its application.⁵

⁴ Galaxy notes that prior to Clear Channel's filing of its modification application, the Commission issued its decision in *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 2000 FCC LEXIS 5823 (2000), in which it afforded all commercial FM stations minimum relief of 6 kilometers from the applicable Section 73.207(a) spacing standards. Notwithstanding this available relief, Clear Channel did not file an application that would have complied with this rule change.

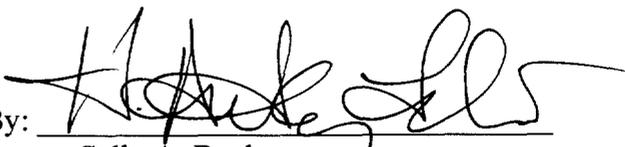
⁵ Specifically, from the revised coordinates, the combined net service gain that would result from WTKV's move to Granby and WXBB's reorientation toward Syracuse would be greater than that suggested in Clear Channel's filing. From the revised transmitter site, the underserved area created by WXBB would be decreased, its short spacing to WILQ(FM), Williamsport, Pennsylvania, would be further minimized and it would no longer virtually double
(continued...)

CONCLUSION

For the foregoing reasons, Galaxy respectfully requests that the Commission grant its Petition and dismiss Clear Channel's modification application. If the Commission concludes that the public interest would be served by attempting to reconcile the Petition and the application, it should require that Clear Channel modify its application to select a transmitter site which would not require a site restriction for WTKV or it should require modifications from both Clear Channel and Galaxy to specify transmitter sites and reference points that best serve the public interest, such as those proffered in Galaxy's Reply Comments.

Respectfully Submitted,

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⁵(...continued)
the short-spacing to WBBS. Additionally, there would be other public interest benefits to both WXBB and WTKV.

CERTIFICATE OF SERVICE

I, Rochelle Johnson, do hereby certify that a true copy of the foregoing, Reply Comments of Galaxy Communications, L.P., was mailed by first-class mail, postage prepaid, this 16th day of July, 2001, to the following:

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