

MAIL ROOM

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

2001 OCT 18 P 2: 15

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments,)
FM Broadcast Stations.)
(Fair Bluff, North Carolina, Litchfield)
Beach, Johnsonville and Olanta, South)
Carolina))

MM Docket No. 00-226 / PED
RM-10001

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 3, 2001

Released: October 12, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making* issued at the request of joint petitioners Atlantic Broadcasting Co., Inc., permittee of Station WSIM(FM), Channel 287C3, Fair Bluff, North Carolina, and The Waccamaw Neck Broadcasting Company, licensee of Station WPDT(FM), Channel 286A, Johnsonville, South Carolina ("petitioners"). Petitioners request the reallocation of Channel 287C3 from Fair Bluff, North Carolina, to Litchfield Beach, South Carolina, as the community's first local aural transmission service, and the reallocation of Channel 286A from Johnsonville, South Carolina, to Olanta, South Carolina, as the community's first local aural transmission service. We received opposing comments from Root Communications License Company, L.P. ("Root"). We received separate responsive comments from each of the joint petitioners.

2. In the *Notice*, we sought comment on the community status of the two proposed communities of license. In addition, we questioned whether the reallocation of Channel 286A from Johnsonville to Olanta, South Carolina is in the public interest. In the *Notice*, we noted that this reallocation would remove the sole local aural transmission service from the community of Johnsonville. We asked petitioners to supplement their petition with additional reasons to justify the removal of Johnsonville's only transmission service.

3. In support of the reallocation of Channel 286A from Johnsonville to Olanta, joint petitioners state that Olanta is a community for allotment purposes. They argue that the reallocation of Channel 286A from Johnsonville to Olanta will result in a preferential arrangement of allotments and that the removal of Johnsonville's sole local aural transmission service will serve the public interest. They state that if Channel 286A is reallocated to Olanta, Johnsonville would not be without local service because Channel 204A could be allotted at Johnsonville operating at minimum power and should be considered as a local transmission service to that community in this proceeding. Second, it argues that Station WGLI, the existing noncommercial educational station licensed to Hemingway, South Carolina, operates at 50kw and places a city-grade signal over Johnsonville and because the two communities are only 12 miles apart and are associated by their proximity to swamps located near the confluence of the Great Pee Dee and Little Pee Dee Rivers, the Hemingway station should serve as a local station to Johnsonville.

4. In addition, petitioners state that substantial public interest considerations would justify the proposed reallocation of Channel 286A from Johnsonville to Olanta. First, they claim that because Johnsonville is located in a very rural and isolated area, a commercial FM station with Class A status is only marginally viable. As further proof of this fact, petitioners point out the fact that since its allotment, the Johnsonville station has only briefly been on the air with commercial programming from 1996 to 1997. During this time of operation, petitioners claim that the station had so few listeners that it failed to register in the Arbitron ratings for the county. Petitioners state that since 1997, Station WPDT(FM) has only operated for a day or so each year to prevent an automatic forfeiture of its license. They claim that the current licensee has no prospect of putting the station permanently on the air. Under these circumstances, they argue, if the reallocation were granted, there would be no actual loss of service to the community. They claim that this station is the equivalent of an unbuilt station. Finally, they claim that the public interest will be served by the reallocation because the proposed purchaser of the station, Glory Communications, is an African American broadcasting group. Glory Communications will purchase the station only if Channel 286A is reallocated from Johnsonville to Olanta. Glory wishes to establish another African-American owned station in an area in which there are few minority owners and by serving Olanta, it would serve a community with a significant African-American population (25%), rather than Johnsonville, which has a relatively small proportion of African-Americans (10%).

5. In its comments in support of the community status of Litchfield Beach, Atlantic provides information from Thomas W. Edwards, County Administrator of Georgetown County. In his letter, Mr. Edwards states that the Litchfield area of the Waccamaw Neck is a distinct community, and that it is comprised of five major subsections: North Litchfield Beach, Litchfield-by-the-Sea, Litchfield Plantation, Litchfield County Club and Litchfield Beach. Mr. Edwards states that the Litchfield area includes three U.S. Census tracts, with an estimated total population of 3,821 persons. He further states that the area has over forty businesses, including churches, restaurants, and medical offices, it has recently been given its own branch of the county library; and there are plans for a new water-sewer facility, marina to serve the area, and a new school, the Waccamaw Middle School. There are local events and many homeowners' associations, the largest of which is the Litchfield Beach Property Owners Association. Petitioner also provides copies of two telephone book covers showing Litchfield among the communities listed, and pages with Litchfield listings. It also includes maps and tourism pamphlets that show and list Litchfield Beach. Petitioner also includes numerous copies of photographs of signs from the area showing the name "Litchfield" on businesses and street signs.

6. In its opposition, Root argues that both reallocations should be denied, challenging the community status of both Olanta and Litchfield Beach. Subsequently, in its reply comments, Root concedes that it appears that Olanta is a community for allotment purposes. It maintains, however, that petitioner has failed to establish that the reallocation of Channel 286A from Johnsonville to Olanta would result in a preferential arrangement of allotments because it has not given a sufficient reason why the removal of Johnsonville's sole local transmission service would serve the public interest. Root also argues that petitioner has failed to establish that Litchfield Beach is a community for allotment purposes. It argues that Litchfield Beach receives most of its services from its county, Georgetown County. It further argues that Litchfield Beach, as an entity, has no post office, political structure, levies no taxes, provides no schools, libraries, police or fire protection, no water services, no hospital; many local associations are actually located on Pawley's Island. Finally, it states that it could not determine the population of the area designated "Litchfield Beach."

7. We will deny the proposed reallocation from Johnsonville to Olanta. First, petitioner has not established that the reallocation of Channel 286A from Johnsonville to Olanta would result in a

preferential arrangement of allotments. Although we agree that petitioner has supplied sufficient evidence in support of Olanta's community status,¹ and the proposal would provide the community its first local transmission service, petitioner has not shown that the removal of the sole aural transmission service from the larger community of Johnsonville² is in the public interest. Comparing the existing and proposed arrangement of allotments under the FM allotment priorities,³ both would trigger priority (3) of the FM allotment priorities since each would provide the community with its first local transmission service. If this were a situation comparing two *de novo* requests for allotments proposing first local service, we would normally favor the larger community of Johnsonville.⁴ In addition, as noted in the generic rulemaking proceeding adopting Section 1.420(i), the Commission generally prohibited the removal of a community's sole local service but stated that "a waiver of the prohibition will be considered 'in the rare circumstances where removal of a local service might serve the public interest.'"⁵

8. In this regard, petitioner has failed to persuade us that removal of this service would serve the public interest. First, irrespective of petitioner's claims, Station WPDT(FM) is a licensed station and we consider it to be a service to the community. We are disturbed by the admission that this licensee is continuing to certify that the station is operating for purposes of retaining the license, but then representing to this branch that the station is not actually on the air. [ADD INFO] With respect to the racial composition of the proposed assignee, and the proposed community of license, as well as the conditions of sale demanded by that proposed assignee, these are not factors ordinarily considered in allotment proceedings, and we see no reason here to deviate from that practice.⁶ Finally, while we note that the Commission recently reaffirmed its long-standing policy that we do not generally consider party-specific economic issues in making allotment decisions,⁷ we also note that petitioner has not established

¹ Olanta, projected 2000 Census population 613, is incorporated, has elected government officials and provides municipal services to its citizens, including police, fire, water, sewer, garbage, public works, streets, library, rescue, and recreation. It has a public school, its own post office and zip code. It has over 50 businesses, eight churches and four civic organizations.

² Projected 2000 U.S. Census figures show that Johnsonville has a population of 1,418, making it over twice the size of Olanta.

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (FCC 1982).

⁴ See, e.g., *Memorandum Opinion and Order* in MM Docket 95-327 (Blanchard, Louisiana and Stephens, Arkansas), 10 FCC Rcd 9828 (FCC, 1995); *Report and Order* in MM Docket 99-180 (Cloverdale, Point Arena, and Cazadero, California), 15 FCC Rcd 17927 (Allocations Branch, 2000); *Report and Order* in MM Docket 95-88 (Rose Hill, Trenton, Aurora, and Okracoke, North Carolina), 15 FCC Rcd 10739 (Allocations Branch, 2000)

⁵ See *Report and Order* in MM Docket No. 88-526, 4 FCC Rcd 4870 (FCC 1989), recon granted in part, 5 FCC Rcd 7094 (FCC 1990). (*Change of Community*).

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92-93 (FCC 1982).

⁷ See *Memorandum Opinion & Order* in MM Docket No. 97-107 (Potts Camp and Saltillo, Mississippi), FCC No. 01-241 (FCC August 29, 2001), and cases cited therein in FN 11; *Report & Order* in MM Docket No. 88-526, 4 FCC Rcd 4870 (FCC 1989), recon. granted in part, 5 FCC Rcd 7094 (FCC 1990). (*Change of Community*).

that it made an effort to establish this station as a profitable business concern. We give no ground to its contention that it failed to register any ratings with Arbitron, because it gives no documentation to support its efforts to gain business or listeners in the very brief period in which it placed a signal on the air.⁸

9. Since these two proposals are dependent on one another, the denial of the reallocation from Johnsonville to Olanta renders the reallocation from Fair Bluff to Litchfield Beach moot. In any event, we feel it necessary to state that while this proposal does not present the same issues of removal of service that the Johnsonville cases presents, from the facts before us, including our own research, we are unable to determine that Litchfield Beach is a community for allotment purposes. Most of the information petitioner has submitted refers to the area of Litchfield, and its own information, as well as our own research, indicates that Litchfield is a larger area containing the smaller entity of Litchfield Beach. We also note that the two names are not interchangeable, despite counsel's statement to the contrary in footnote 2 of its reply comments. Petitioner has submitted very little information to support its contention that Litchfield Beach, as a separate entity, is a community for allotment purposes; in fact, it appears to be primarily a residential area. We are constrained to consider the community which is before us, however, and we are simply unable to determine that that locality, Litchfield Beach, has any indicia of community within itself.

10. IT IS ORDERED That the petition for rulemaking filed by Atlantic Broadcasting Co., Inc., and The Waccamaw Neck Broadcasting IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

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

⁸ We also note that, contrary to petitioner's suggestion, the possible use of Channel 204A at Johnsonville has no bearing on this case.