

2001 NOV 13 A 10: 11

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

In the Matter of)	RECEIVED
)	
Amendment of Section 73.202(b))	MM Docket No. <u>00-195</u>
Table of Allotments,)	RM-9973
FM Broadcast Stations.)	RM-10193
(Clinton and Oliver Springs, Tennessee))	RM-10194

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 31, 2001

Released: November 9, 2001

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making (RM-9973) filed by Clyde Scott, Jr., D.B.A. EME Communications ("Petitioner"), the Allocations Branch considers herein a Notice of Proposed Rule Making ("Notice"), 15 FCC Rcd 19650 (2000), proposing the allotment of Channel 291A to Clinton, Tennessee, which would constitute that community's fourth local aural transmission service. In his comments, Petitioner expressed his continuing interest in filing an application for authority to construct and operate an FM station in Clinton, utilizing Channel 291A, if that channel is allotted to Clinton, Tennessee. Sutton Radiocasting Corporation also filed comments expressing its interest in applying for that channel if it were allotted to Clinton. Ron Meredith and Oliver Springs Broadcasting Company filed comments and counterproposals in which both parties proposed to allot Channel 291A to Oliver Springs, Tennessee, rather than to Clinton. If allotted to Oliver Springs, Channel 291A would provide the first competitive local broadcast service to Oliver Springs. Ron Meredith's counterproposal received Rulemaking Number 10193 and Oliver Springs Broadcasting Company (OSBC) received Rulemaking Number 10194. The Commission also issued a Public Notice, Report No. 2499, soliciting comments on the counterproposals. No pleadings were filed in response to that Public Notice. For the reasons stated below, we allot Channel 291A to Oliver Springs, Tennessee.

2. Both Meredith and OSBC have filed counterproposals stating that allotting Channel 291A to Oliver Springs rather than to Clinton should be preferred pursuant to the Commission's FM allotment priorities,¹ because Oliver Springs would be provided with its first local competitive aural transmission service, whereas Clinton would be provided with a fourth local aural transmission service. We observe that Clinton has a population of 8,972 persons (1990 U.S. Census), while Oliver Springs has a population of 3,433 persons (1990 U.S. Census.) Station WSMJ(FM) is licensed to Oliver Springs, while Stations WDVX(FM), WYFC(FM), and

¹ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) ("FM Priorities"). The 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)].

WYSH(AM) are licensed to Clinton. Under the FM allotment priorities, we find that no first or second fulltime aural reception service would be provided to either Clinton or Oliver Springs and that each community has some local radio service. Since neither Clinton nor Oliver Springs can be preferred under FM priorities (1), (2), or (3), we shall compare the needs of these two communities for local radio service under FM priority (4). The Commission has stated that a comparison of proposals under priority (4) can "take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate."² We find that the factor of the availability of local service provides us with a clear choice between the two communities.³ Clinton is served by three local radio stations, while Oliver Springs is served by only one local radio station. Thus, the allotment of Channel 291A to Oliver Springs would provide the first competitive local radio service to Oliver Springs. In this light, Oliver Springs is preferred over Clinton under priority (4).

3. We believe that the public interest would be served by the allotment of Channel 291A at Oliver Springs, Tennessee, since it will provide a first competitive local aural transmission service to that community. Channel 291A can be allotted to Oliver Springs, Tennessee, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules at coordinates 36-05-12 NL and 84-21-25 WL.

4. Accordingly, pursuant to 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 December 24, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Oliver Springs, Tennessee	254C3, 291A

5. A filing window for Channel 291A, Oliver Springs, 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.

6. IT IS FURTHER ORDERED, That the petition for rulemaking (FM-9973) filed by Clyde Scott, Jr., D.B.A. EME Communications IS DENIED.

² FM Priorities, *supra*, 90 FCC 2d at 92 n.8.

³ See Warren and Niles, Ohio, 59 RR 2d 1179, 1183 (Policy and Rules Div. 1986), and Washington and Wilmington, North Carolina, 51 RR 2d 1297, 1299 (Policy and Rules Div. 1982).

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

8. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 291A at Oliver Springs, Tennessee, 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