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Federal Communications Commission
Washington, D.C. 20554
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January 17, 2002

John F. Garziglia, Esq.
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Dear Mr. Garziglia:

This is in response to a petition for rule making you filed on behalf of Montgomery Broadcasting Company ("Montgomery"), licensee of Station WQZQ-FM, Channel 273C1, Dickson, Tennessee.

In that petition, Montgomery seeks to reallocate Channel 273C1 from Dickson to Pegram, Tennessee, pursuant to Section 1.420(i) of the Commission's Rules. Montgomery states that there will be no change in the spacing and contour protection relationships between Station WQZQ-FM and other facilities because there will be no change in the WQZQ-FM transmitter site as a result of the proposed reallocation. Our engineering study of Montgomery's proposal discloses that Montgomery's existing site is short-spaced by 1.5 kilometers to Station WOWF(FM), Channel 273C3, in Crossville, Tennessee. Montgomery states that Station WQZQ-FM "currently operates under a Section 73.215 contour protection grant, originally established by its construction permit dated May 23, 1995." Citing Killeen and Cedar Park, Texas ("Killeen"), 15 FCC Rcd 1945 (2000), Montgomery states that the Commission has permitted a facility with pre-existing short-spacing to change its community of license "so long as no change in the technical facilities is involved, no new short-spacing will be created, and no existing short-spacing will be exacerbated." Montgomery also claims that adoption of its proposal will not affect any existing contour protections and no new short spacings will result.

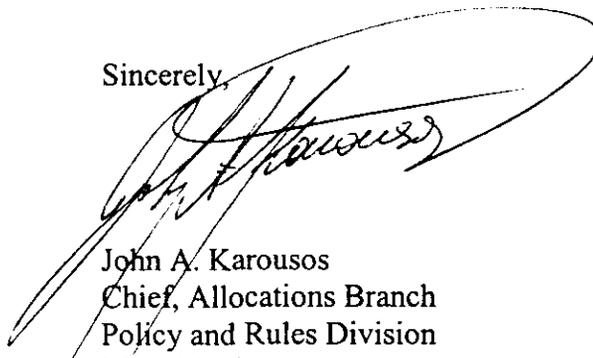
Traditionally, the Commission's policy is to grant no waivers of the spacing requirements in considering the allotment of an FM Channel. The Commission has created a limited exception to that policy to allow a station that complied with relevant Commission spacing rules at the time it received the grant of its first construction permit, but became technically "short-spaced" under new rules created after the station had been authorized, such as "grandfathered" pre-1964 facilities under Section 73.213 of the Rules, to change its community of license without changing its transmitter or technical facilities. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992) and cases cited in paragraphs 3 and 4 of Albemarle and Indian Trail, North Carolina ("Albemarle"), 16 FCC Rcd 13876 (2001). Killeen is a further exception to the usual policy, but it is limited to a situation in which (1) a station that wants to change its community of license is short-spaced to a pre-1964 grandfathered station and other stations that had been granted pursuant to Section 73.215 of the Commission's Rules; (2) the station in

question does not propose to change its transmitter site or technical facilities and does not propose to utilize contour protection for any station; and (3) the proposed change in community of license creates no new short-spacing and no existing short-spacing would be exacerbated.

Montgomery's situation differs from the situation in Killeen in that Montgomery received its initial construction permit pursuant to a Section 73.215 contour protection grant and the licensee in Killeen did not. The Commission has stated its reluctance to grant a waiver of the short-spacing rules at the allotment stage when the station requesting the waiver has received its current grant pursuant to a voluntary use of Section 73.215. See Albemarle at paragraph 7. Thus, unlike pre-1964 grandfathered, short-spaced stations, we believe that other short-spacings caused by the use of contour protection or directional antennas under Section 73.215 of the Rules should be treated differently because they are the result of a voluntary decision by stations to move to short-spaced sites and provide contour protection rather than to utilize a fully-spaced site. Although such short-spacings are permitted at the application stage, they are not allowed at the allotment stage unless the licensee who wishes to obtain a waiver of the short-spacing rules can demonstrate compelling public interest benefits that derive from its proposal. See Albemarle at paragraph 6. Montgomery has not presented any such compelling public interest benefits in its petition for rule making.

In light of the foregoing, Montgomery's petition for rule making is being returned as unacceptable for filing.

Sincerely,



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