

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-62
Table of Allotments,)	RM-10053
FM Broadcast Stations.)	RM-10109
(Ardmore, Brilliant, Brookwood, Gadsden, Hoover,)	RM-10110
Moundville, New Hope, Pleasant Grove,)	RM-10111
Russellville, Scottsboro, Troy, Tuscaloosa and)	RM-10112
Winfield, Alabama, Okolona and Vardaman,)	RM-10113
Mississippi, Linden, McMinnville, Pulaski)	RM-10114
and Walden, Tennessee))	RM-10116

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted April 2, 2003

Released: April 4, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration and Joint Request for Approval of Option Agreement filed by **STG** Media, LLC and Pulaski Broadcasting, Inc. (“Joint Parties”) directed to the *Report and Order* in this proceeding.¹ Capstar TX Limited Partnership, Buffalo River Broadcasters and KEA Radio, Inc. each filed an Opposition to Petition for Reconsideration. The Joint Parties filed a Reply to Oppositions to Petition for Reconsideration. For the reasons discussed below, we are denying the Petition for Reconsideration and Joint Request for Approval of Option Agreement.

Background

2. In response to a Petition for Rule Making filed jointly by Capstar TX Limited Partnership, Clear Channel Broadcasting Licenses, Inc., and Jacor Licensee of Louisville, II, Inc. (“Petitioners”), the *Notice of Proposed Rule Making* in this proceeding set forth eight interrelated proposals.² Included among those proposals was the proposed substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, reallocation of Channel 252C1 to Ardmore, Alabama, and modification of the Station WKSR license to specify operation on Channel 252C1 at Ardmore. In order to accommodate the Channel 252C1 allotment at Ardmore, the Petitioners proposed the substitution of Channel 278A for Channel 252A at Scottsboro, Alabama. In one of the six Counterproposals filed in response to the *Notice*, STG Media proposed the allotment of Channel 278A to New Hope, Alabama, as a first local service. That Counterproposal was in conflict with the proposed Channel 278A allotment at Scottsboro. In view of the fact that the Scottsboro allotment was necessary to accommodate the new allotment at Ardmore, it was necessary to compare a first local service at Ardmore versus a first local service at New Hope. We allotted Channel 278A to the larger community of New Hope consistent with Commission precedent.

¹ 17 FCC Rcd 16332 (MM Bur. 2002).

² 16 FCC Rcd 4924 (MM Bur. 2001).

3. In the Petition for Reconsideration and Joint Request for Approval of Option Agreement, STG Media withdraws its interest in the Channel 278A allotment at New Hope. This withdrawal is expressly contingent upon two matters. First, we must approve an Option Agreement by which STG Media would acquire the license of Station WKSJ, Channel 252A, Pulaski, Tennessee, from Pulaski Broadcasting. Second, in view of the withdrawal of the Channel 278A allotment proposal at New Hope, we must modify the Station WKSJ license to specify operation on Channel 252C1 at Ardmore as originally proposed in the *Notice* in this proceeding.

4. In support of its Petition for Reconsideration, the Joint Parties contend that approval of the Option Agreement would serve the public interest because it would lead to a prompt initiation of a first local service at Ardmore while a first local service at New Hope would be involved in a prolonged auction process. The Joint Parties also argue that approval of the Option Agreement would conserve Commission resources by resolving two mutually exclusive proposals.

5. We deny the Petition for Reconsideration and Joint Request for Approval of Option Agreement. We first note that the Joint Parties have not sought reconsideration of our underlying determination that a first local service at New Hope has a greater public interest benefit than a first local service at Ardmore. We recognize that there has been a delay in the auction process which will affect the Channel 278A allotment at New Hope? However, a licensee of Station WKSJ would have three years to construct facilities to implement an upgrade and reallocation to Ardmore. As such, it would be speculative to suggest that upgrading service at Ardmore would be promptly implemented to the extent of overriding the greater public interest benefit of a first local service to New Hope. In this instance, the Joint Parties seek to have this determination set aside in order that STG Media may acquire Station WKSJ as an upgraded Ardmore station. This is merely a private benefit to the Joint Parties which does not address the public interest benefit of having a first local service at the larger community. We have already expended Commission resources in making this determination. As such, favorable action on the Petition for Reconsideration and Joint Request for Approval of Option Agreement would not conserve administrative resources as suggested by the Joint Parties.

6. We also find that the proposed withdrawal does not comply with Section 1.420(j) of the Commission's Rules. To withdraw an expression of interest, the filing party must certify that it has received no "money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest." "Other consideration" includes financial concessions, such as the transfer of assets, the provision of tangible pecuniary benefit, and non-financial concessions that confer any type of benefit on a recipient⁴ The Joint Parties contend that STG Media is paying the market value for Station WKSJ as a Class C1 facility licensed to Ardmore? With respect to Station WKSJ ever being licensed to Ardmore as a Class C1 facility, STG Media is in a unique position. In the absence of withdrawal of its interest in the New Hope allotment, there will be no Class C1 allotment at Ardmore. In this instance, the STG Media withdrawal is expressly contingent upon approval of the option agreement by which STG

³ See *National Public Radio v. FCC*, 254 F. 3d 226 (D.C. Cir. 2001).

⁴ See 47 C.F.R. §1.420(j); see also 47 C.F.R. 573.3588(c)(4).

⁵ Station WKSJ is currently a Class A facility licensed to Pulaski serving approximately 2,500 square kilometers. As a Class C1 facility licensed to Ardmore, it would increase its service area by 13,900 square kilometers and serve approximately 700,000 additional persons.

Media alone would acquire Station WKSJ and Station WKSJ would be upgraded to a Class C1 facility at Ardmore. While we are unable to quantify the amount of tangible pecuniary benefit to STG Media, we do find that this is, at the very least, a concession by the existing licensee of Station WKSJ that confers a benefit to STG Media. Without the benefit of acquiring Station WKSJ as a Class C1 facility licensed to Ardmore, there is no withdrawal by STG Media of its expression of interest in the New Hope allotment. This is a benefit to STG Media specifically tied to its withdrawal and therefore within the ambit of Section 1.420(j) of the Rules.

8. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration and Joint Request for Approval of Option Agreement filed by STG Media, LLC and Pulaski Broadcasting, Inc. IS DENIED.

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau