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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 03-105
Table of Allotments,) RM-10671
FM Broadcast Stations.)
(Glens Falls, Indian Lake, Malta)
and Queensbury, New York))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 23, 2003

Released: July 24, 2003

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Vox New York, LLC, licensee of Station WNYQ, Queensbury, New York and Entertronics, Inc., licensee of Station WCQL, Glens Falls, New York, ("Petitioners"), the Commission has before it for consideration the *Notice of Proposed Rule Making*,¹ requesting changes to the FM Table of Allotments. Petitioners request the substitution of Channel 289A for Channel 289B1 at Queensbury and reallocation of Channel 289A to Malta, New York, reallocation of Channel 240A from Glens Falls to Queensbury, New York, and the allotment of Channel 290A at Indian Lake, New York. Petitioners filed comments in which they restated their intention to file applications for Channel 289A at Malta, Channel 240A at Queensbury and Channel 290A at Indian Lake. No other comments were received in response to the *Notice* in this proceeding.

2. The proposed reallocation of Stations WNYQ and WCQL was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.²

3. As explained in the *Notice*, Petitioners requested the substitution of Channel 289A for Channel 289B1 at Queensbury, reallocation of Channel 289A to Malta, New York, and modification of the authorization for Station WNYQ to specify operation on Channel 289A at Malta, as a first local service under priority 3) of the allotment priorities.³ Petitioners acknowledge that Station WNYQ is the only operating service in Queensbury. In support of the removal of Station WNYQ and to ensure continued

¹ *Glens Falls, Indian Lake, Malta and Queensbury, New York*, 18 FCC Rcd 8535 (M.B. 2003).

² See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990)

³ The FM Allotment priorities are. (1) First full-time aural service; (2) Second full-time 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 (1982).

service at Queensbury, Petitioners proposed to reallocate Station WCQL, Channel 240A from Glens Falls, New York, to Queensbury, New York, and made a commitment to operate Station WCQL at Queensbury. Glens Falls will continue to be served by noncommercial educational Stations WGFM(FM), WLJH(FM), WMML(AM) and WWSC(AM). Petitioners pointed out that Channel 240A at Glens Falls is a grandfathered short-spaced three kilowatt Class A allotment while the allotment of Channel 240A at Queensbury is a fully spaced six kilowatt Class A allotment. Petitioners also proposed the allotment of Channel 290A at Indian Lake, New York, as a first local service, and have committed to filing an application for the channel at Indian Lake. The allotment at Indian Lake is made possible by the downgrading of Channel 289B1 to a Class A facility at Queensbury.

4. Based upon the information presented in this proceeding, we believe the public interest would be served by the substitution of Channel 289A for Channel 289B1 at Queensbury and reallocation of the channel to Malta, New York, since it would provide a first local service for the community. The change of community of license for Station WNYQ will not result in the removal of sole local aural service for Queensbury because of the reallocation of Station WCQL from Glens Falls to Queensbury, New York, in this proceeding. Petitioners have requested the reallocation of Station WCQL from Glens Falls to Queensbury, stating their willingness to file an application for Channel 240A at Queensbury. A staff engineering analysis indicates that the reallocation of Channel 289A from Queensbury to Malta will result in a loss of service to 123,334 people with a gain in service to 363,492 people. We further show that the allotment of Channel 289A at Malta covers 13.7 percent of the Albany New York urbanized Area and approximately 86 percent of the urbanized area of Saratoga Springs. Petitioners provided a showing establishing independence of Malta from the urbanized areas.⁴ Additionally, the reallocation of Channel 240A from Glens Falls to Queensbury will result in a loss of service to 50,013 people with a gain in service to 12,170 people. Both the gain and loss areas are served by five or more aural services. Our engineering analysis indicates that Channel 289A can be allotted to Malta in compliance with the Commission's spacing requirements at coordinates 42-58-58 and 73-48-00. Our analysis also indicates that Channel 240A can be allotted to Queensbury in compliance with our Rules at coordinates 43-24-12 and 73-40-25. Canadian concurrence has been requested for the allotment of Channel 289A at Glens Falls and for Channel 240A at Queensbury. Further, the allotment of Channel 240A at Glens Falls has been requested as a specially negotiated short-spaced allotment.⁵ To ensure that local service will continue to be provided to Queensbury, we shall condition the grant of an authorization to operate Station WNYQ on Channel 289A at Malta upon activation of service for Station WCQL on Channel 240A at Queensbury.⁶ The Commission has specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. We have weighed the factors and are granting Petitioners' reallocation request because

⁴ *Faye and Richard Tuck, 3 FCC Rcd 5374 (1988)* (Eight factor analysis for determining a proposed community's independence from a nearby urbanized area)

⁵ Canadian concurrence has been requested for the allotments at Queensbury, Malta and Indian Lakes, New York, but has not yet been received. Therefore, operation with the facilities specified for the allotment of Channel 289A at Queensbury, Channel 240A at Glens Falls and Channel 290A at Indian Lake herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement or if specifically objected to by Canada.

⁶ *See Llano and Marble Falls, TX, 12 FCC Rcd 809 (M.M. 1997).*

of the public interest benefits of providing first local service to Malta. However, we are compelled to condition the reallocation of Channel 289A to Malta on activation of Channel 240A at Queensbury to insure continued service at Queensbury.

5. In response to Petitioners request for an allotment at Indian Lake, New York, we believe that the public interest would be served by the allotment of Channel 290A at Indian Lake, New York, as it will provide the community with a first local service. Channel 290A can be allotted to Indian Lake without a site restriction at coordinates 43-46-57 and 74-16-20. Canadian concurrence has been requested for this allotment. A filing window for Channel 290A 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. 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 **September 8, 2003**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Glens Falls, New York	----
Indian Lake, New York	290A
Malta, New York	289A
Queensbury, New York	240A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Vox New York, LLC, for Station WNYQ, Channel 289B1, Queensbury, New York, IS MODIFIED to specify operation on Channel 289A at Malta, New York, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station WNYQ shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to section 316(a) of the Communications Act , of

1934, as amended, that the authorization of Entertronics, Inc, for Station WCQL, Channel 240A, Glens Falls, New York, IS MODIFIED to specify operation on Channel 240A at Queensbury, New York, subject to the following conditions:

(a) Within 90 Days of the effective date of the *Order*, the licensee of Station WCQL shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Vox New York, LLC, licensee of Station WNYQ, Queensbury, New York, and Enteronics, Inc., licensee of station WCQL, Glens Falls, New York, are required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for Station WNYQ, Channel 289A, from Queensbury, New York, to Malta, New York and for the change in community of license for Station WCQL, Channel 240A, from Glens Falls, New York, to Queensbury, New York.

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

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau