

Federal Communications Commission

DA 05-3101

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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. 04-20
Table of Allotments,)	RM-10842
FM Broadcast Stations.)	RM-11128
(Cambridge, Newark, St. Michaels, and Stockton,)	RM-11129
Maryland and Chincoteague, Virginia) ¹)	RM-11130

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 2005

Released: December 2, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")² issued in response to a Petition for Rule Making filed on behalf of CWA Broadcasting, Inc. ("Petitioner"), licensee of Station WINX-FM, Channel 232A, St. Michaels, Maryland. Petitioner seeks to upgrade Station WINX-FM from Channel 232A to 232B1, reallocate Channel 232B1 from St. Michaels to Cambridge, Maryland, and to modify its station license accordingly. Petitioner filed Comments in which it reiterated its intent to effectuate its proposal. MTS Broadcasting, L.C. ("MTS"), licensee of Station WCEM-FM, Cambridge, Maryland, filed "Comments and Counterproposal" ("Counterproposal") which proposed to allot Channel 233A to Newark, Maryland (RM-11129), while Route 12 Community Broadcasters ("Route 12") filed "Comments and Counterproposal" ("Counterproposal") which proposed to allot Channel 232A to Stockton, Maryland (RM-11130). In addition, Dana J. Puopolo filed a Counterproposal³ to allot Channel 233A to Chincoteague, Virginia (RM-11128). Petitioner filed Reply Comments to the foregoing Counterproposals. MTS filed Supplemental Comments⁴ in response to

¹ The caption has been changed to include Newark and Stockton, Maryland, and Chincoteague, Virginia.

² *Cambridge and St. Michaels, Maryland*, 19 FCC Rcd 2592 (MB 2004).

³ Mr. Puopolo filed a Petition for Rule Making prior to the comment due date specified in the *Notice*, which we will process as a counterproposal because it is mutually exclusive with the counterproposals of MTS and Route 12. See, e.g., *Conflicts Between Applications and Petitions for Rulemaking to amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993) and Section 1.420(d) of the Commission's rules.

⁴ MTS also filed a motion for leave to file those Supplemental Comments and Petitioner filed Oppositions to both MTS's motion and its Supplemental Comments. MTS filed a Reply to Petitioner's Opposition. In order to resolve this proceeding on the basis of a complete record, we will consider all pleadings filed in this proceeding.

Petitioner's Reply Comments. The staff placed the three foregoing counterproposals on a *Public Notice*,⁵ and both Petitioner and MTS filed Reply Comments to that *Public Notice*.⁶ After having considered all the facts and circumstances in this proceeding, we will allot Channel 235A to Newark, Maryland and Channel 233A to Chincoteague, Virginia.

2. Petitioner's request to reallocate Channel 232B1 from St. Michaels (2000 U.S. Census of 1,193 persons) to Cambridge (2000 U.S. Census population of 10,911 persons) would provide Cambridge with its third local aural transmission service. Petitioner made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's rules,⁷ 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.⁸ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁹

3. MTS states that the community of Newark, Maryland, is a Census Designated Place (CDP) with a 2000 U.S. Census population of 339 persons, a post office, zip code, a volunteer fire department, several businesses, including a child-care center and assisted care facility, two churches,¹⁰ a museum and a solid waste site. Route 12 describes Stockton, Maryland (2000 U.S. Census population of 143 persons), as a community with its own post office and zip code, three churches, a volunteer fire department, and several commercial establishments. Although neither community is large, the Commission generally presumes that if a community is incorporated or listed in the U.S. Census, the community qualifies for FCC allotment purposes.¹¹ Both of these communities are included in the 2000 U.S. Census and meet the minimum requirements for a community to which an FM channel can be allotted. Petitioner has argued that neither Stockton nor Newark qualifies as such a community. We believe the Commission's ruling that Semora, North Carolina, is a community for allotment purposes is

⁵ The *Public Notice* is entitled *Report No. 2685* and is dated December 9, 2004.

⁶ Petitioner also filed a Petition for Leave to File Supplement to its Reply Comments and the Supplement itself, in an effort to correct certain mistakes in its Engineering Statement. We grant this motion. Bay Broadcasters, Inc., licensee of Station WBEY(FM), Crisfield, Maryland, also filed Reply Comments to the *Public Notice*. Since most of those comments addressed the potential financial viability of the Petitioner's proposed and existing allotments and the three channels proposed by the Counterproposals, they must be disregarded pursuant to current Commission Policy. See *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *affirmed*, 4 FCC Rcd 2276 (1989).

⁷ 47 C.F.R. § 1.420(i).

⁸ 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) ("*Community of License*").

⁹ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). 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. Equal weight is given to priorities (2) and (3).

¹⁰ MTS's Supplemental Comments explain that there are two churches sharing the same building in Newark, but that a third church is located just outside Newark and uses a Newark address.

¹¹ See case cited in note 9 at 101.

applicable here.¹² In that case, the Commission found that Semora was a community even though Semora was not listed in the census reports, had an estimated population of only 150, had no local government, and provided no municipal services except for its volunteer fire department. That case noted that even though residents relied on the county to provide police and schools, there could be any number of reasons as to why such services are provided on a county-wide basis as opposed to a local basis. Like Semora, neither Newark nor Stockton is a small community on the fringe of a larger urban area.

4. Mr. Puopolo's Counterproposal proposes to provide Chincoteague, Virginia with its second local aural transmission service, which falls under priority (4) of the FM allotment priorities. Likewise, Petitioner's provision of a third local aural transmission to Cambridge, Maryland triggers priority (4) of the FM allotment priorities. MTS's counterproposal to allot Channel 233A to Newark, Maryland, and Route 12's counterproposal to allot Channel 232 to Stockton, Maryland, are mutually exclusive with each other. Each of these proposed allotments would provide a first local aural transmission service to its chosen community of license pursuant to priority (3) of the FM allotment priorities. Since the 2000 U.S. Census population for Newark is 339 persons, whereas the 2000 U.S. Census population for Stockton is 143 persons, we conclude that the public interest would be better served by providing a first local service to Newark, the larger community for which a first local service is proposed.¹³ We allot alternate Channel 235A to Newark. While Channel 235A at Newark will continue to be in conflict with Channel 232 at Stockton, Channel 235A at Newark would not be mutually exclusive with Channel 233 at Chincoteague. As such, we are able to allot Channel 233A to Chincoteague, Virginia. Therefore, we allot Channel 233A to Chincoteague. Since there is no other available Class A FM Channel to allot to Stockton, we cannot allot a Class A channel to Stockton.

5. Channel 235A at Newark and Channel 233A at Chincoteague are not mutually exclusive with Petitioner's request to upgrade Channel 232A to 232B1 and reallocate Channel 232B1 to Cambridge, Maryland. Nevertheless, we cannot make the requisite finding that a reallocation of Channel 232B1 from St. Michaels to Cambridge would result in a preferential arrangement of allotments as required by *Community of License, supra*, note 8. Retaining Channel 232A at St. Michaels would provide that community with its first local aural transmission service under priority (3) of the FM allotment priorities, while moving Channel 232B1 to Cambridge would trigger priority (4) of the FM allotment priorities, namely, "other public interest matters," by providing Cambridge with its third local aural transmission service.¹⁴

6. Consistent with the technical requirements of the Commission's rules, Channel 235A will be allotted to Newark, Maryland, utilizing coordinates of 38-12-20 NL and 75-17-15 WL, with a site restriction of 5.0 kilometers (3.1 miles) south of Newark. In addition, consistent with the technical requirements of the Commission's rules, Channel 233A will be allotted to Chincoteague, Virginia, using

¹² *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments (Semora, North Carolina)*, 5 FCC Rcd 934 (1990).

¹³ *See, e.g., Blanchard, Louisiana et al.*, 10 FCC Rcd 9828 (1995).

¹⁴ In regard to Station WINX-FM, we note that on November 8, 2005, we dismissed a one-step application filed by the Petitioner proposing Class B1 facilities for Station WINX-FM (File No. BPH-20020718ABE). The reason for that dismissal was the identification of Cambridge as the community of license. As a result of our action allotting alternate Channel 235A to Newark, a preliminary engineering review indicates that there would not be a technical impediment for a Channel 232B1 upgrade at St. Michaels.

the center city reference coordinates of 37-56-00 NL and 75-22-36 WL.

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

8. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective January 17, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Newark, Maryland	235A
Chincoteague, Virginia	233A

9. IT IS FURTHER ORDERED, That the Counterproposal submitted by MTS Broadcasting, L.C. IS GRANTED to the extent indicated.

10. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Dana J. Puopolo IS GRANTED.

11. IT IS FURTHER ORDERED that the Petition for Rule Making filed by CWA Broadcasting, Inc. IS DENIED.

12. IT IS FURTHER ORDERED, That the Counterproposal filed by Route 12 Community Broadcasters IS DENIED.

13. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

14. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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