

MAILED

JUN 27 2006

FCC Mail Room

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-318
Table of Allotments,)	RM-11040
FM Broadcast Stations.)	
(Culebra and Vieques, Puerto Rico) ¹)	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 21, 2006

Released: June 23, 2006

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 by Western New Life, Inc.³ ("Petitioner"), permittee and operator by Special Temporary Authority ("STA") of Station WXZX(FM), Culebra, Puerto Rico, proposing the substitution of Channel 291A for Channel 254A at Culebra, Puerto Rico. To accommodate the allotment, Petitioner also proposed the deletion of vacant Channel 291B at Vieques, Puerto Rico. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments were filed by International Broadcasting Corporation, ("IBC"), Aerco Broadcasting Corporation ("Aerco"), New Life Broadcasting, Inc. ("New Life"),⁴ and Raul G. Rivera Menendez ("Menendez"). Comments and a supplement were also jointly filed by V.I. Stereo Communications Corporation ("V.I. Stereo"), Gaby Ortiz ("Ortiz") and Michael Bahr ("Bahr"). Reply comments were filed by Petitioner and New Life. Petitioner filed a request for expedited consideration. We will deny the instant proposal for the reasons stated below.

2. In support of its proposal, Petitioner states that Station WXZX(FM) presently operates on Channel 293A pursuant to an STA. Petitioner further states the substitution of Channel 291A for Channel 254A at Culebra would enable Station WXZX(FM) to obtain a permanent authorization for a first local transmission service. Petitioner asserts that the deletion of Channel 291B at Vieques to accommodate the allotment raises no public interest concerns because a station has never been constructed, so the residents of Vieques have not come to rely on that service, and Vieques is already served by the full-time operation of AM Station WIVV. Petitioner further asserts that the public interest

¹ The community of Vieques has been added to the caption.

² *Culebra, Puerto Rico*, Notice of Proposed Rule Making, 19 FCC Rcd 15389 (MB 20004).

³ An application for assignment of license (File No. BAPH-2041220AAY) was granted on April 25, 2005, assigning the construction permit for Station WXZX(FM) from La Gigante Radio Corporation to Western New Life, Inc., and was consummated on May 30, 2005, with conditions.

⁴ New Life expressed its interest in applying for Channel 254A at Culebra as a second service if retained as a vacant channel in the community.

favors deleting vacant Channel 291B at Vieques and allotting Channel 291A at Culebra because the Culebra facility has been built and operational for nearly six years, and the residents of Culebra have come to rely upon the service.

3. The record of the Culebra allotment reveals that Channel 293A was allotted to Culebra as the community's first local aural transmission service. A filing window for that channel opened in 1991. Channel 254A at Culebra was one of the allotments involved in a "daisy chain" of allotments in MM Docket No. 91-259.⁵ The *Report and Order* in that docket was affirmed on appeal substituting Channel 293A for Channel 254A at Culebra. Petitioner located a suitable site that would allow operation of Station WXZX(FM) on Channel 254A. According to the Petitioner, it could not, and still cannot, seek an authorization to operate on Channel 254A at Culebra because the stations involved in the "daisy chain" have not moved their facilities to accommodate the operation on Channel 254A at Culebra as they were directed to do so by the Commission. In order to initiate a first local service at Culebra, Petitioner was forced to seek an STA to operate Station WXZX(FM) on Channel 293A, since it could not obtain permanent authorization on either Channel 254A or Channel 293A. The STA was originally granted in 1998, and Petitioner has regularly renewed the STA to continue to provide a first local service to Culebra, but would prefer a permanent authorization.

4. We stated in the *Notice* that Channel 291B would not be deleted at Vieques if there was an expression of interest for the channel. In response to the expressions of interest to retain the allotment, Petitioner suggested that Channel 254A can be substituted for Channel 291B at Vieques. Petitioner asserts that the downgrade and substitution of Channel 254A at Vieques would provide a first local service to the primary community in the Vieques municipio, and would allow Channel 291A to permanently be allotted to Culebra as its second local aural transmission service.

5. In their comments, IBC, Aerco, Menendez, V.I. Stereo, Ortiz and Bahr oppose the deletion of Channel 291B at Vieques, or the downgrade and channel substitution of a Class A allotment in order to accommodate Culebra proposal. V.I. Stereo also asserts that there is an Application for Review pending of the ruling that deleted Station WVIS(FM)'s license at Vieques, and that the instant rule making is premature.⁶ If Channel 291B is retained at Vieques, these commenters have affirmed their intention to apply for the channel.

6. In its reply comments, Petitioner argues that the situation in this proceeding is unique. Specifically, it argues that through no fault of its own, it has been unable to obtain a license to operate Station WXZX(FM) on Channel 254A at Culebra, Puerto Rico.⁷ As a result, Petitioner believes that requesting the deletion of vacant Channel 291B at Vieques in favor of providing a channel for permanent authorization for Culebra's first local service was appropriate because (a) Vieques is already served by a full-time AM station, and (b) there is precedent for the deletion of a vacant allotment. Petitioner requests

⁵ See *Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, Puerto Rico, and Christiansted and Frederiksted, Virgin Islands*, Report and Order, 10 FCC Rcd 6673 (MMB 1995); *recons. denied*, 11 FCC Rcd 16392 (MMB 1996), *app. for rev. denied*, 12 FCC Rcd 10055 (MMB 1997).

⁶ In response to this argument, Petitioner states that V.I. Stereo had an authorization to construct a station at the Vieques allotment but failed to construct before its permit expired. It appealed that decision but its Petition for Reconsideration was denied. V.I. Stereo then filed an Application for Review, which is pending.

⁷ Petitioner filed an erratum to its reply comments.

that the Commission substitute Channel 254A for Channel 291B at Vieques to allow Station WXZX(FM) to obtain a permanent authorization on Channel 291A at Culebra, Puerto Rico.

Discussion

7. We deny the proposed substitution at Culebra. This substitution requires either the deletion or downgrade of the Channel 291B allotment at Vieques. We will not take either action because parties have filed expressions of interest to retain the channel and their desire to apply for it as a Class B allotment.⁸ Moreover, since the *Notice* did not specifically propose the substitution of Channel 254A for Channel 291B at Vieques as an alternative, the public has not been afforded the required opportunity to respond. Therefore, we find that there is no compelling public interest benefit to delete or downgrade and substitute Channel 254A for Channel 291B at Vieques, to accommodate the allotment of Channel 291A at Culebra as a permanent authorization.

8. Furthermore, Petitioner's reliance on the *Bethel Springs, Tennessee*⁹ as a similar case is misplaced. In that case, we found that the allotment of a first local service (priority three) outweighed the necessity of downgrading a vacant channel. Specifically, there was (1) an expression of interest for the downgraded channel and an affirmation by the proponent to apply for the channel, if allotted; and (2) the downgrade was proposed in the *Notice*, and no formal expression of interest was submitted either opposing the downgrade, or explicitly indicating that any party had an interest in applying for the vacant channel, or building a station if its application was granted.

9. IT IS ORDERED, That the Petition for Rule Making filed by Western New Life, Inc., IS DENIED.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

Western New Life, Inc.
P.O. Box 371177
Cayey, Puerto Rico 00737

11. This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this *Report and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.

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

⁸ *See, e.g., Montrose and Scranton, Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 6306 (1990), *Driscoll, Texas, et al.*, Report and Order, 10 FCC Rcd 6528 (MMB 1995); and *Martin, Tennessee, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 12747 (MMB 2000).

⁹ Memorandum and Order, 17 FCC Rcd 14472 (MMB 2002).

13. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau