



Federal Communications Commission
Washington, D.C. 20554

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DEC 09 2008

December 8, 2008

FCC Mail Room Reply Refer to:
1800B3-RFS

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Re: In the Matter of Amendment of
Section 73.202(b), FM Table of Allotments
FM Broadcast Stations
(Lane and Quinby, South Carolina)

Station WIBZ(FM), Wedgefield, South Carolina
File No. BPH-20080404ACE

Station WWHM(AM), Sumter, South Carolina
File No. BP-20080404ACC

Dear Mr. Smithwick:

This refers to your Petition for Rule Making filed on behalf of Miller Communications, Inc. ("Miller Communications"), licensee of Station WIBZ(FM), Channel 238A, Wedgefield, South Carolina, and AM Station WWHM, Sumter, South Carolina. The Petition proposes the deletion of vacant Channel 237A at Quinby, South Carolina, and the allotment of Channel 238A at Lane, South Carolina, as its first local service.¹ This would accommodate your hybrid application to substitute Channel 237A for Channel 238A at Wedgefield, South Carolina, reallocate Channel 237A to Quinby, South Carolina, and modify the Station WIBZ(FM) license to specify operation on Channel 237A at Quinby.² In order to replace the loss of the sole local service at Wedgefield, you have also filed an application proposing a change in community for AM Station WWHM for Sumter, South Carolina, to Wedgefield.³ For the reasons discussed below, we are returning your Petition for Rule Making and dismissing the associated hybrid applications.⁴

¹ You have also filed the necessary FCC Form 301 application along with the required filing fee for Lane, South Carolina. File No. BNPH-20080404ACR. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

² File No. BPH-20080404ACE.

³ File No. BP-20080404ACC.

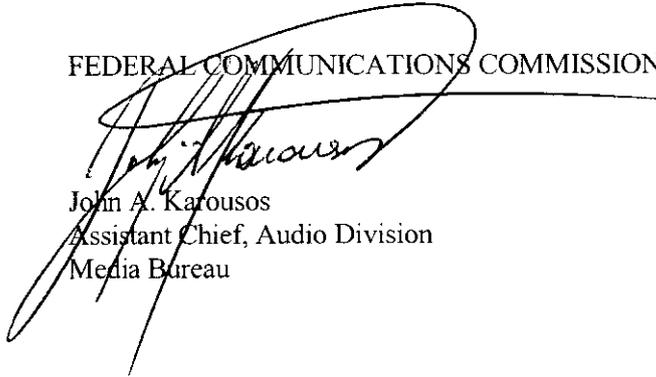
⁴ See 47 C.F.R. § 73.3517(c). See also, *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223 ¶ 17 (2006).

The Commission's longstanding policy is, absent compelling public interest reasons, to refrain from deleting a vacant allotment where there are *bona fide* expressions of interest.⁵ As noted in your Petition for Rule Making, Channel 237A was allotted to Quinby four years ago.⁶ In that FM allotment proceeding, Miller Communications filed comments expressing interest in the allotment. Although this allotment has not yet been opened for auction, you filed a hybrid application to expedite a first local service to Quinby by the aforementioned Station WIBZ change of community application. As such, this filing constitutes a reiteration of Miller Communications' expression of interest in vacant Channel 237A at Quinby. Under these circumstances, we find no reason to delete vacant Channel 237A at Quinby because there is a valid expression of interest in the allotment.

Moreover, we are concerned that the deletion of the Quinby allotment, absent extraordinary circumstances, would be inconsistent with the competitive bidding requirements set forth in Section 309(j) of the Communications Act.⁷ The procedure contemplated in your proposal would also be contrary to a specific representation in the *Report and Order*⁸ that the Channel 237A allotment at Quinby would be ultimately available at auction and, therefore, deletion of this allotment would be unfair to parties wishing to participate in that auction.⁹ Thus, we are returning your Petition for Rule Making and dismissing the Station WIBZ and Station WWHM applications.

Accordingly, the Petition for Rule Making filed by Miller Communications, Inc., is hereby returned and the aforementioned Station WIBZ application (File No. BPH-20080404ACE) and Station WWHM application (File No. BP-20080404ACC) are hereby dismissed.

FEDERAL COMMUNICATIONS COMMISSION



John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁵ See *Boswell, Oklahoma and Detroit, Texas*, Report and Order, 22 FCC Rcd 17632 (MB 2007) and *Coosada, Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 21117 (MB 2002) (deleting vacant allotments where there are no *bona fide* expressions of interest).

⁶ See *Florence, Quinby, Greeleyville, and Wedgefield, South Carolina, and Savannah, Georgia*, Report and Order, 19 FCC Rcd 4348 (MB 2004).

⁷ See 47 U.S.C. § 309(j).

⁸ *Id.* note 5.

⁹ *Cf. Grants and Church Rock, New Mexico*, Report and Order, 22 FCC Rcd 9462 (MB 2007), *recon. pending* (denying a counterproposal to downgrade an existing vacant allotment that had not been subject to an auction window and announcing that "[i]n virtually all cases, we will not downgrade a 'drop-in' channel, especially if the vacant channel has not yet been subject to a window for the filing of applications for that channel").

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

In the Matter of)
) MM Docket No. _____
) RM- _____
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
)
Lane and Quinby, South Carolina)

FILED/ACCEPTED
APR - 4 2008
Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attention: Audio Division, Media Bureau

PETITION FOR RULE MAKING

Miller Communications, Inc. ("Miller") by its attorneys, and pursuant to Section 1.411 of the Commission's Rules, hereby respectfully files this Petition for Rule Making to modify the Table of Allotments (47 C. F. R. §73.202 (b)) to allot FM Channel 238A to Lane, South Carolina. In support whereof, the following is shown:

Background

1. In MB Docket No. 03-35, the Commission allotted Channel 237A to Quinby, South Carolina.¹ The allotment was made as a result of a counterproposal filed by Miller. Miller expressed its interest in operating a station on Channel 237A at Quinby. It has been nearly four years since Channel 237A was allotted to Quinby but the FCC has not yet opened a window to accept applications for the use of the channel. It is Miller's proposal to change the operating channel of WIBZ(FM), Wedgefield, SC, from Channel 238A to Channel 237A and change the

¹ See *Florence, Quinby, Greeleyville and Wedgefield, South Carolina, and Savannah, Georgia*, 19 FCC Rcd 4348 (2004) [69 Fed. Reg. 16497, published March 30, 2004].

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community of license of WIBZ from Wedgefield to Quinby, South Carolina, so that Miller can begin providing the service to Quinby that it proposed in MB Docket 03-35. Mindful of the need to provide an opportunity for new entrants, Miller also proposes to allot FM Channel 238A to Lane, South Carolina. Therefore, there would be provided an opportunity for new entrants to bid in an auction for a new FM station at Lane. It will also provide a first local service to Lane.

Expression of Continuing Interest

2. If the Commission allots Channel 238A to Lane, Miller will promptly file an application to participate in a future auction for the use of Channel 238A at Lane, and upon grant of a construction permit, will promptly construct and operate the facilities.

Technical Information

3. Attachment A is a Technical Statement, which is incorporated herein by reference, that provides the Commission with technical information about the proposed allotment to Lane. Miller is today filing an application on FCC Form 301 to change the community of license of WIBZ(FM), Wedgefield, for the use of Channel 237A at Quinby as a "Hybrid" proposal. Miller is also filing an application to modify the community of license of co-owned WWHM(AM), Sumter, South Carolina, to Wedgefield, South Carolina. The Technical Statement shows that the facilities to be utilized for the proposed change of community of license from Quinby to Lane are mutually exclusive with the vacant allotment at Quinby. Channel 238A meets the Commission's minimum distance separation requirements from the proposed site, provided WIBZ is moved to Channel 237A at Quinby.

Lane, South Carolina

4. According to the U.S. Census, Lane, South Carolina, had a 2000 population of 585 persons. Lane is an incorporated town, with a mayor-council form of government. Lane has a

full time Chief of Police and police officer and a City Clerk. Lane provides water to its residents and is starting a sewer project. Lane has a Williamsburg County-supported Fire Department ("Lane Station") but all firemen are local volunteer firefighters. Lane has three churches, a Methodist Church, Lane Chapel and Antioch Church. Lane has retail businesses. Lane has its own Post Office and Zip Code (29564). As such it has all the requisite indicia of a licensable community. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. See *Columbia City, Florida*, 13 FCC Rcd 245 (1997). Therefore, Lane is a community for allotment purposes.

Section 307(b) Analysis

5. The allotment of Channel 238A to Lane, South Carolina, is preferred under the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Under priority three, first local service, Lane warrants a preference for bringing a first local service to Lane over retaining Channel 237A at Quinby as a vacant channel. Lane is outside of any Urbanized Area and the proposed city-grade contour of a maximum facility Class A station operating at Lane would not cover more than 50% of any Urbanized Area.

Other Public Interest Considerations

6. As shown in the attached Technical Statement, Lane would be entirely covered by a 70 dBu or better signal from a hypothetical station operating with its transmitter at the reference coordinates. The gain and loss areas receive five full-time services, so the area is well-served.

7. The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures, supra*. They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, as noted *supra*, first local service to Lane is greatly preferred to

retaining a vacant channel at Quinby. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 238A to Lane.

WHEREFORE, Miller respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

	<u>South Carolina</u>	
	<u>Present</u>	<u>Proposed</u>
Quinby	237A	237A ²
Lane	---	238A

Conclusion

Miller requests the Commission to allot Channel 238A to Lane, South Carolina, with the concurrent modification of the license of WIBZ to operate on Channel 237A at Quinby, South Carolina. If the Commission allots Channel 238A to Lane, Miller will timely file an application to bid in a future auction for the use of Channel 238A at Lane, and upon grant thereof, Miller will construct the facility and operate it. If the Commission grants Miller's concurrent application for construction permit for WIBZ at Quinby, Miller will construct the facilities and operate WIBZ at Quinby.

Respectfully submitted,

MILLER COMMUNICATIONS, INC.

By:


Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, DC 20016
202-363-4560

April 4, 2008

² WIBZ would be relocated to Quinby and use Channel 237A.

ATTACHMENT A

PETITION FOR RULE-MAKING
MILLER COMMUNICATIONS, INC.
ALLOT CHANNEL 238A
LANE, SOUTH CAROLINA
December 2007

This Technical statement and attached exhibits were prepared on behalf of Miller Communications, Inc. ("MCI"). MCI herein requests the Commission amend §73.202(b) of the rules by allotting Channel 238A to Lane, South Carolina.¹ MCI herein states that once the Commission allots this proposed channel to Lane, it will participate in the future auction process seeking authority to construct the new Lane facility.

PROPOSAL

Channel 238A can be allotted to Lane, South Carolina at North Latitude 33° 36' 21" and West Longitude 79° 57' 17". This represents a site restriction of 11.7 kilometers north-northwest to avoid short spacing station WTUA, Channel 291A, St. Stephen, South Carolina and WSSX, Channel 236C0, Charleston, South Carolina.² Attached as Exhibit #1 is a §73.207 spacing study which shows that, from the proposed allocation site, Channel 238A meets the Commission's minimum distance separation requirements to all licensed, applied for, or proposed facilities with the exception of Channel 237A in Quinby, South Carolina, and WIBZ, which is a companion one-step application to change to Channel 237A at Quinby, South Carolina. Exhibit #2 is a map

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- 1) MCI was the original proponent to allot Channel 237A to Quinby, South Carolina. MCI is also the licensee of WIBZ, Wedgefield, South Carolina and WWHM (AM), Sumter, South Carolina. MCI has submitted a minor change application to change the community of license of WIBZ to Quinby on Channel 237A and to change the community of license of WWHM (AM) to Wedgefield, South Carolina under the Commission's one-step city of license change rules. Therefore, this instant proposal allots a new channel, which would provide the first local service for Lane, South Carolina.
 - 2) The proposed site was used in a gain and loss review for the proposed change of channel and community of license for the vacant allotment of Channel 237A in Quinby.

which shows that from the proposed allocation site, a 70 dBu contour is placed over all of the community of Lane, South Carolina. Further, the site is not located offshore or on airport property and is, therefore, suitable for tower construction.

Therefore, MCI proposes the following change to §73.202(b) of the rules:

Quinby, South Carolina

Present	Proposed
237A	237A ³

Lane, South Carolina

Present	Proposed
None	238A

PUBLIC INTERESTS

The allotment of Channel 238A to Lane, South Carolina will potentially allow the community to obtain its first local radio service. A maximum Class A facility, from the proposed reference site, will provide a 60 dBu contour to 45,749 persons over 2,512.3 square kilometers, assuming uniform terrain. As noted above, MCI will participate in the future auction for this new channel at Lane, South Carolina.

3) As previously noted WEBZ on Channel 237A will replace the present Channel 237A allotment in Quinby. Further, AM station WWIM, in a contingent application, is seeking a change of community of license from Sumter, South Carolina to Wedgefield, South Carolina, as a replacement service for WIBZ.

The foregoing technical statement was prepared on behalf of Miller Communications, Inc., by Graham Brock, Inc., its Technical consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM channels and facilities was extracted from the CDBS database. We assume no liability for errors or omissions in that database which may be adverse to the information contained herein.

PETITION FOR RULE-MAKING
MILLER COMMUNICATIONS, INC.
ALLOT CHANNEL 238A
LANE, SOUTH CAROLINA
December 2007

EXHIBIT #1

Allocation/Clearance Study for Channel 238A Lane, South Carolina
Using Proposed Allocation/Application Site as Reference

REFERENCE		DISPLAY DATES
33 36 21.0 N.	CLASS = A	DATA 12-06-07
79 57 17.0 W.	Current Spacings	SEARCH 12-06-07
----- Channel 238 - 95.5 MHz -----		

Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
* WIBZ 33 56 56.0	LIC 238A 80 23 34.0	Wedgefield CX	4.400 kW	313.4 118 M	55.62	115.0	-59.38
Miller Communications, Inc BLH20020606AAY							
AL6498 34 10 23.0	VAC 237A 79 37 11.0	Quinby	6.000 kW	26.0 100 M	70.13	72.0	-1.87
Miller Communications, Inc RM10713*							
* WIBZ 34 14 51.0	CP 237A 79 48 41.0	Wedgefield CX	3.900 kW	10.5 125 M	72.39	72.0	0.39
Miller Communications, Inc BPH20070122AJR							
WKML 34 46 50.0	LIC-D 239C0 79 02 45.0	Lumberton DEN	100.000 kW	32.4 318 M	154.91	152.0	2.91
Wkml License Limited Partn BLH19971024KA							
WTUA 33 29 36.0	LIC 291A 79 53 21.0	St. Stephen CN	6.000 kW	154.1 100 M	13.88	10.0	3.88
Praise Communications, Inc BLH19900606KC							
WSSX-FM 32 47 44.0	LIC 236C0 79 50 27.0	Charleston CN	100.000 kW	173.3 305 M	90.48	86.0	4.48
Citadel Broadcasting Compa BLH19900924KC							
WWBD 33 19 38.0	LIC-N 239C3 80 57 09.0	Bamberg NCX	11.000 kW	251.8 145 M	97.76	89.0	8.76
Miller Communications, Inc BLH20050915ACY							
WAVF 32 49 04.0	LIC 241C1 79 50 08.0	Hanahan CX	100.000 kW	172.8 237 M	88.10	75.0	13.10
Apex Broadcasting, Inc. BLH20030716ABU							
WIXV 32 03 29.0	LIC 238C1 81 20 19.0	Savannah CX	98.000 kW	217.3 301 M	215.06	200.0	15.06
Cumulus Licensing Llc BLH20030514ADV							

* It is proposed to change WIBZ from Wedgefield on Channel 238A to Quinby on Channel 237A.

GRAHAM BROCK, INC.
BROADCAST TECHNICAL CONSULTANTS

Allocation Reference
Latitude: 33-36-21.01 N
Longitude: 079-57-16.99 W
ERP: 6.00 kW
Channel: 238 95.5 MHz
AMSL Height: 116.33 m
Horiz. Pattern: Omni

70 dBu - 3.16 mV/m
(Uniform Terrain)

LANE

EXHIBIT #2
PETITION FOR RULE-MAKING
MILLER COMMUNICATIONS, INC.
ALLOT CHANNEL 238A
LANE, SOUTH CAROLINA
December 2007

