

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

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JUN 14 2010

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 08-243
Table of Allotments,)	RM-11490
FM Broadcast Stations.)	FCC Mail Room
(Culebra, Puerto Rico, Charlotte Amalie, and)	
Christiansted, Virgin Islands))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 2010

Released: June 14, 2010

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making*,¹ issued at the request of Western New Life, Inc. ("Petitioner"), licensee of Station WNVE-FM, *formerly* Station WJZG-FM, Channel 254A, Culebra, Puerto Rico. The *Notice* proposed the deletion of vacant Channel 271B at Charlotte Amalie, Virgin Islands. Petitioner filed Comments and Reply Comments. OCC Acquisitions, Inc. ("OCC Acquisitions"), licensee of Station WSTA(AM), Charlotte Amalie, Virgin Islands, filed Comments. La Mas Z Radio Corporation ("La Mas") filed Comments and Counterproposal and a Supplement. No other comments or counterproposals were received in response to this *Notice*. For the reasons discussed below, we will retain a Class B allotment at Charlotte Amalie and will substitute Channel 237B for Channel 271B at that community.

2. **Background.** The *Notice* proposed the deletion of vacant Channel 271B at Charlotte Amalie to accommodate the Station WNVE-FM hybrid contingent application, requesting the substitution of Channel 271A for Channel 254A at Culebra, and modification of the Station WNVE-FM authorization.² Petitioner filed Comments, stating that the proposed Charlotte Amalie deletion would enable Station WNVE-FM to obtain a license. In this regard, Station WNVE-FM has been operating continuously under Special Temporary Authority ("STA") for over ten years awaiting the final implementation of MM Docket No. 91-259.³

3. OCC Acquisitions filed Comments, expressing an interest in vacant Channel 271B at Charlotte Amalie. To this end, OCC Acquisitions was previously the licensee of Station WSTA-FM, Channel 271B, Charlotte Amalie. The Station WSTA-FM license was revoked and had expired pursuant to Section 312(g) of the Communications Act of 1934, as amended, because the station had been silent for

¹ See *Charlotte Amalie, Virgin Islands*, Notice of Proposed Rule Making, 24 FCC Rcd 203 (MB 2009) ("Notice").

² See File No. BMPH-20071211AAQ; see also File No. BMPH-20030116AAF.

³ See *Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, Vieques, Puerto Rico, and Christiansted and Frederiksted, Virgin Islands*, Report and Order, 10 FCC Rcd 6673 (MMB 1995), *recons. denied*, Memorandum Opinion and Order, 11 FCC Rcd 16392 (MMB 1996), *app. for rev. denied*, Memorandum Opinion and Order, 12 FCC Rcd 10055 (MMB 1997).

12 consecutive months.⁴ The Petitioner filed Reply Comments, requesting that we deny OCC Acquisitions' expression of interest because it failed to submit an application to demonstrate its *bona fide* interest in vacant Channel 271B at Charlotte Amalie.

4. La Mas filed Comments and Counterproposal, proposing the substitution of Channel 237B for vacant Channel 271B at Charlotte Amalie. La Mas states that it only expresses an interest in filing an application for a new station on Channel 237B at Charlotte Amalie. To accommodate the proposed Channel 237B substitution at Charlotte Amalie, La Mas requests that we issue a show cause order directed at Radio 95 Incorporated ("Radio 95"), licensee of FM Station WJKC, Channel 236B, Christiansted, Virgin Islands, to show cause why its license should not be modified to Channel 224B in lieu of Channel 236B at Christiansted to accommodate the proposed substitution of Channel 237B at Charlotte Amalie.⁵ La Mas contends that, as compared with the Petitioner's initial proposal, the counterproposal will result in a preferential arrangement of allotments because it will allow for the retention of a vacant Class B allotment at Charlotte Amalie and the grant of the Petitioner's hybrid application to continue service at Culebra. La Mas also filed a Supplement, stating that its proposal is mutually exclusive with the Petitioner's hybrid application that proposes the substitution of Channel 271A for Channel 254A at Culebra, and modification of the Station WJZG-FM license.

5. **Discussion. Retention of Allotment.** The Commission's policy is not to delete a vacant allotment in which interest has been expressed, absent a compelling reason to do so.⁶ Consistent with this policy, the *Notice* solicited comment on whether or not to delete Channel 271B at Charlotte Amalie. In response to the *Notice*, two expressions of interest were filed by OCC and La Mas to apply for and operate an FM station on a Class B FM channel at Charlotte Amalie. Under these circumstances, we will retain a Class B allotment at Charlotte Amalie. We also find that OCC Acquisitions' expression of interest is valid even though it did not file an application for Channel 271B at Charlotte Amalie. The Commission only requires that a proponent file a new application for requests to add a new allotment to the FM Table to demonstrate a *bona fide* expression of interest in the proposed allotment.⁷

6. **Channel Preference.** While we have two expressions of interest in this proceeding for retaining a Class B allotment at Charlotte Amalie, the parties have expressed interest in different channels. OCC Acquisitions has expressed an interest in applying for Channel 271B at Charlotte Amalie, while La Mas suggests that we substitute alternate Channel 237B at Charlotte Amalie.⁸ La Mas also

⁴ *OCC Acquisitions, Inc. Radio Station WSTA-FM, Charlotte Amalie, VI*, Memorandum Opinion and Order, 17 FCC Rcd 6147 (2002)(granting review to permit consideration but finding that Section 312(g) accords no Commission discretion and mandates that a station license will automatically expire as a matter of law if it does not "transmit broadcast signal" for 12 consecutive months).

⁵ On April, 9, 2010, the staff issued an *Order to Show Cause* directed at Radio 95 to which no response was received. See *Culebra, Puerto Rico and Charlotte Amalie, and Christiansted, Virgin Islands*, Order to Show Cause, 25 FCC Rcd 3599 (MB 2010).

⁶ See, e.g., *Montrose and Scranton Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 6305, 6306 (1990) (denying request to delete an allotment because interest had been expressed in retaining the allotment).

⁷ 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 1412, 14224 ¶ 20 (2006) (announcing that a party filing a petition for rulemaking to add a new allotment to the FM Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application specifying the proposed facilities to encourage only *bona fide* proponents seeking to add channels to the FM Table).

⁸ Although La Mas styles its pleading as a "counterproposal," this characterization of its proposal is not correct. A counterproposal is defined as a proposal for an alternative and mutually exclusive allotment or set of allotments in

(continued...)

states that it is only interested in applying for Channel 237B at Charlotte Amalie. It is well established that a party's preference for a particular FM channel need not be granted⁹ and that the Commission has the flexibility to consider the use of alternate channels to resolve conflicts.¹⁰ Using this flexibility, we believe that the public interest would be better served by the substitution of Channel 237B for Channel 271B at Charlotte Amalie in lieu of the retention of Channel 271B at that community. As noted by La Mas, the substitution of Channel 237B has the benefits of not only retaining a Class B allotment at Charlotte Amalie but also accommodating the grant of the Petitioner's hybrid application, which will allow for the continuation of service by Station WNVE-FM at Culebra, Puerto Rico.

7. Accordingly, we are substituting Channel 237B for vacant Channel 271B at Charlotte Amalie.¹¹ To accommodate this allotment, we are substituting Channel 224B for Channel 236B at Christiansted, and modifying the license of Station WJKC to reflect this change. As noted, no response was received from Radio 95 in reply to the *Order to Show Cause*.¹² Therefore, Radio 95 has deemed to have consented since no written statement was filed, contesting to the involuntary channel substitution of Channel 237B at Christiansted for Station WJKC. La Mas states that if it prevails at auction for the Charlotte Amalie Channel 237B construction permit, it would reimburse Radio 95 for the reasonable costs incurred in connection with the channel change for FM Station WJKC consistent with the *Circleville* policy.¹³ In any event, the ultimate permittee of vacant Channel 237B will be required to reimburse Radio 95 for the reasonable costs incurred in connection with the substitution of Channel 224B at Christiansted for FM Station WJKC consistent with the *Circleville* policy.

8. **Ordering clauses.** Accordingly, pursuant to the authority found 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 July 29, 2010, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Charlotte Amalie, Virgin Islands	*226A, 237B, 257A

9. 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

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the context of the proceeding in which it is made. *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, 14224 ¶ 20 (1966). Because there are no conflicts between the channels proposed by La Mas and the channels already proposed in this proceeding, La Mas' allotment plan is not a counterproposal. However, La Mas' proposal can be considered as an alternate channel suggestion at Charlotte Amalie. *See, e.g., Pinewood, South Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 7609 (1990) (explaining that the Commission may consider alternate channels suggested by the parties or by the Commission staff) ("*Pinewood*").

⁹ *See, e.g., Chester, Shasta Lake City, et. al, California*, Memorandum Opinion and Order, 13 FCC Rcd 8548 (MMB 1998) (rejecting a petitioner's preference for a specific FM channel and finding that the allotted channel was equivalent).

¹⁰ *See Pinewood*, 5 FCC Rcd at 7610.

¹¹ The reference coordinates for vacant Channel 237B are 18-20-36 NL and 64-55-48 WL.

¹² *Id.* note 5.

¹³ *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

U.S.C. § 801(a)(1)(A) .

10. IT IS FURTHER ORDERED, That the application, File No. BMPH-20071211AAQ, IS GRANTED.

11. IT IS FURTHER ORDERED, That effective July 26, 2010, the Media Bureau's Consolidated Data Base System will reflect Channel 224B at Christiansted, Virgin Islands, as the reserved assignment for station WJKC(FM) in lieu of Channel 236B.

12. IT IS FURTHER ORDERED, That the ultimate permittee of Channel 237B at Charlotte Amalie, Virgin Islands, will be required to reimburse the licensee of Station WJKC(FM), Christiansted, Virgin Islands, for its reasonable and prudent costs in changing channels as set forth in this Report and Order

13. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau