

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC Mail Room

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Culebra, Puerto Rico, Charlotte Amalie, and)
Christiansted, Virgin Islands))

MB Docket No. 08-243
RM-11490

To: Office of the Secretary, FCC

OPPOSITION TO PETITION FOR RECONSIDERATION

Western New Life, Inc. ("WNL"), by its counsel, hereby submits its Opposition to the Petition for Reconsideration ("Petition") filed by OCC Acquisitions ("OCC") in connection with the Report and Order, DA 10-1062, released June 14, 2010 ("R&O"), in the above-referenced docket.¹ For the reasons set forth below, OCC's Petition should be denied.

1. WNL is the permittee and operator by Special Temporary Authority ("STA") of Station WNVE-FM, fac id. 3250, (the "Station"). The Station is the only local aural service allotted to the community of Culebra. At present the Station is authorized on a secondary basis pursuant to its STA. WNL cannot obtain a license for the Station on the channel that was allotted to Culebra prior to this rule making proceeding (Channel 254A) because Channel 254A has not been available since it was first allotted to Culebra fifteen years ago as a result of the MM Docket 91-259 proceeding. The Station's construction permit for Channel 254 issued after the

¹ This Opposition is timely filed as FCC Public Notice of the filing of the Petition was released on September 2, 2010, and the Federal Register publication occurred on September 14, 2010.

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conclusion of the 91-259 proceeding contained a condition preventing the Station from obtaining a license on that channel until all of the other stations in that proceeding completed their prescribed modifications. To date, the necessary changes by the other stations have not been made. In the most recent of many steps WNL has taken to find a way to license the Station, WNL filed the Petition for Rule Making (“PRM”) that started this proceeding.

2. WNL’s PRM proposed the substitution of Channel 271A for the Channel 254A allotment at Culebra, PR, which in turn required the deletion of the vacant Channel 271B allotment at Charlotte Amalie. Contemporaneously with the PRM, WNL filed a contingent application proposing modification of the Station’s CP to specify Channel 271A instead of Channel 254A.

3. OCC filed Comments in response to the Commission’s Notice of Proposed Rule Making (“NPRM”) opposing WNL’s proposed deletion of the vacant Charlotte Amalie channel stating that it “remains interested in an FM station at this community, and intends to submit an application when a filing window opens and participate in an auction should one become necessary.”² La Mas Z Radio Corporation (“La Mas”) filed Comments and Counterproposal that suggested a way to allow for Channel 271A to be allotted to Culebra, while retaining a vacant Class B allotment at Charlotte Amalie. La Mas proposed Channel 237B instead of Channel 271B at Charlotte Amalie, which would require FM Station WJKC to switch from Channel 236B to Channel 224B at Christiansted, Virgin Islands.

4. After considering WNL’s initial Petition for Rule Making and OCC’s comments and the counterproposal filed by La Mas, the R&O granted WNL’s hybrid

² OCC Comments at p.1.

contingent application for Channel 271A at Culebra and deleted Channel 254A at Culebra, substituted Channel 237B for Channel 271B at Charlotte Amalie, and modified the license of Station WJKC to substitute Channel 224B for Channel 236B at Christiansted.³

5. OCC's Petition argues that maintaining Channel 271B at Charlotte Amalie and adding Channel 237B at Charlotte Amalie, to create an additional vacant allotment there would result in a preferential arrangement of allotments as compared to a scenario that would result in one allotment at Charlotte Amalie and one allotment at Culebra. An examination of the number of FM stations already licensed to Charlotte Amalie and the number of vacant allotments already available there is helpful. Charlotte Amalie, with a population of just 15,697, is already served by six licensed full-power FM facilities. In addition, there are three vacant FM allotments assigned and available there.

6. Substituting Channel 237B for Channel 271B leaves the community with the same three vacant allotments it has at present and provides Culebra with a single *usable* allotment. Adding the Channel 237B allotment to the existing Channel 271B allotment at Charlotte Amalie would create a *fourth* vacant allotment there and leave the community of Culebra without a licensed first local service. The arrangement adopted in the R&O providing Culebra with one allotment and leaving Charlotte Amalie with nine allotments (six licensed and three vacant) is a more equitable distribution of channels which is the goal of the FCC's allocation policies.⁴

³ Radio 95 Incorporated, the licensee of Station WJKC, did not file any comments with respect to the involuntary channel change proposed in this docket, so it is deemed to have consented to that change.

⁴ OCC bases its argument on the notion that the Station already provides first local service to the community of Culebra. WNL respectfully disagrees. The Station provides only a secondary service at this point, no more permanent than an FM translator. Upholding this decision can be seen as advancing priority three of the Commission's allotment priorities by providing a *permanently licensed* first local service to the community of Culebra, fulfilling a promise that was made to that community over 15 years ago.

7. Moreover, it is inappropriate for the Commission to even consider the proposal set forth by OCC at this juncture. If it were OCC's desire to seek the creation of two allotments at Charlotte Amalie, it needed to file in response to the comments and counterproposal of La Mas before the R&O was issued. It is procedurally inappropriate for OCC's new proposal to be considered at the reconsideration stage of this proceeding.

8. OCC also asks the Commission to change long standing policy and place the burden of reimbursing the costs of WKJC's channel change upon WNL rather than upon the party that eventually acquires and constructs upon the allotment that will finally require WKJC to change frequency. It is not the grant of WNL's hybrid application for the Station, or the channel change from 254A to 271A at Cnlebra that will cause WJKC to ultimately change channels. It is the desire of OCC and La Mas to apply for a frequency at Charlotte Amalie that will trigger the WJKC channel change, therefore, the burden to reimburse those costs should properly be with the party that ultimately constructs on Channel 237B in Charlotte Amalie.

WHEREFORE, WNL requests that the Commission affirm its decision in the R&O and deny OCC's Petition for Reconsideration.

Respectfully submitted,

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September 29, 2010

CERTIFICATE OF SERVICE

I, Scott C. Cinnamon, do certify that I have on this 29th day of September, 2010, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Opposition to Petition for Reconsideration" to the following:

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