

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-10
Table of Allotments,) RM-9435
FM Broadcast Stations.) RM-9688
(Walton and Livingston Manor, New York)1)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 19, 2000

Released: February 1, 2000

By the Chief, Allocations Branch:

1. At the request of Dana Puopolo ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 1025 (1999), proposing the allotment of Channel 296A to Walton, New York, as the community's second local FM and third aural service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted. In addition, a counterproposal was filed by AM Communications, requesting the allotment of Channel 296A to Livingston Manor, New York, as its first local aural service.2 No other comments or reply comments were received.

2. AM Communications states that Livingston Manor is listed in the 1990 U.S. Census as a Census Designated Place with a population of 1,482 people. It goes on to state that it has its own locally elected town supervisor and council as well as a town hall, post office and zip code. In addition, AM Communications states that Livingston Manor has its own kindergarten through 12th grade school, serving approximately 800 students, as well as a library, chamber of commerce, fire house and several churches. It also points out that the community has its own businesses, including a gift shop, a grocery store and several country markets. AM Communications points out that Walton already receives local aural service from two stations, AM Station WDLA and FM Station WDLA-DM. Therefore, it contends that Livingston Manor is a community for allotment purposes and the proposed to Livingston Manor, as a first local aural service, would further a higher allotment priority.3 Finally, AM Communications submits that the allotment of Channel 296A at Livingston Manor would provide a new service to 35,978 people while the allotment of the channel at Walton would provide a new service to only 29,950 people, or 6,028 fewer people.

1 The community of Livingston Manor has been added to the caption.

2 Public Notice of the filing of the counterproposal was given on July 19, 1999, Rept. No. 2345.

3 The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

3. In an effort to resolve the conflicting requests, the staff has performed a channel search for both Walton and Livingston Manor. However, our study shows that there are no alternate channels available for either community. Therefore, we have been guided by the allotment priorities set forth in Revision of FM Allotment Policies and Procedures, *supra*, and find that the public interest would be better served by the allotment of Channel 296A to Livingston Manor, as its first local aural service (Priority 3), than by the allotment of the channel to Walton as its third local aural service (Priority 4). We find that Livingston Manor is a community for allotment purposes and deserving of a first local aural service.

4. Channel 296A can be allotted to Livingston Manor in compliance with the Commission's minimum distance separation requirements, with a site restriction of 5.7 kilometers (3.5 miles) north to avoid a short-spacing to Station WWYY, Channel 296A, Belvidere, New Jersey.⁴ Canadian concurrence in the allotment has been obtained since Livingston Manor is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 17, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Livingston Manor, New York	296A

6. A filing window for Channel 296A at Livingston Manor, New York, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the petition for rule making filed by Dana Puopolo to allot Channel 296A to Walton, New York (RM-9435), IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁴ The coordinates for Channel 296A at Livingston Manor are 41-56-52 North Latitude and 74-48-13 West Longitude.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Mass Media Bureau