

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-34
Table of Allotments,)	RM-9233
FM Broadcast Stations.)	RM-9607
(Buckhannon and Burnsville,)	
West Virginia) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 16, 2000

Released: August 25, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 4993 (1998), issued in response to a petition for rule making filed by J&K Broadcasting, Inc., (“Petitioner”) proposing the allotment of Channel 238A at Buckhannon, West Virginia, as the community’s third local commercial FM transmission service. Petitioner filed supporting comments in response to the Notice. Hershey Broadcasting Company (“Hershey”) filed “Comments and Counterproposal” in which it proposed the allotment of Channel 238A to Burnsville, West Virginia as that community’s first local aural transmission service.

2. On May 1, 2000, petitioner expressed its interest in withdrawing its petition for rule making concerning the allotment of Channel 238A to Buckhannon, West Virginia. In accordance with Section 1.420(j) of the Commission’s Rules, petitioner advises that there is no agreement, written or oral, with any party regarding its request for withdrawal and that no party had paid any money to petitioner for the withdrawal of its expression of interest. Further, Hershey has filed comments explaining that it has not paid any consideration to petitioner in connection with the withdrawal of its petition for rule making, that Hershey had not been paid any consideration, and that there are no oral or written agreements between petitioner and Hershey.

3. Based on the record before us, we find that the public interest would be served by allotting Channel 238A to Burnsville, West Virginia, as that community’s first local aural transmission service. Channel 238A can be allotted to Burnsville in compliance with the minimum distance separations requirements of Section 73.207(a) and the principal community coverage requirements of Sections 73.315(a) of the Commission’s Rules. The site proposed by Hershey for Channel 238A at Burnsville² is located 2.1 kilometers northeast of the center city site for Burnsville in order to protect the license and application for Channel 238C (Station WQHY) at Prestonburg, Kentucky.

¹ The community of Burnsville is added to the caption.

² The coordinates for Channel 238A at Burnsville are: 38-52-00 and 80-38-30.

4. 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 October 10, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channeo Number</u>
Burnsville, West Virginia	238A

5. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

6. A filing window for Channel 238A at Burnsville, West Virginia, 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. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass media Bureau, (202), 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau