

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 97-130
FM Broadcast Stations.)	RM-8751
(Galesburg, Illinois and Ottumwa, Iowa))	
)	
)	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 18, 2000

Released: October 27, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Petition for Reconsideration filed by Galesburg Broadcasting Company (“Galesburg Broadcasting”), licensee of Station WLSR, Channel 224A, Galesburg, Illinois, directed to the Report and Order in this proceeding. 13 FCC Rcd 20211 91998). For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of Northern Broadcast Group, former licensee of Station WLSR, the Notice of Proposed Rule Making in this proceeding proposed the substitution of Channel 224B1 for Channel 224A at Galesburg, and modification of the Station WLSR license to specify operation on Channel 224B1. Prior to the comment date in this proceeding, Gilbro Communications, licensee of Station KTWA, Channel 224C3, Ottumwa, Iowa, filed a one-step upgrade application (File No. BPH-960322IC) proposing Class C2 facilities at its current site. In view of the conflict between this application and the underlying Channel 224B1 upgrade proposal in this proceeding, the application was treated as a timely counterproposal. See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917, at n. 18 (1992), recon granted in part, 8 FCC Rcd 4743 (1993). Conflicting FM proposals are comparatively considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).¹ In this situation, both proposals were for an upgrade of an existing facility and were considered under Priority (4) because neither proposal would have provided either a first or second fulltime service under Priority (2) or (3). Under Priority (4), we will favor the proposal that would expand service to the greatest number of persons.

3. The Report and Order substituted Channel 224C2 for Channel 224C3 at Ottumwa, Iowa, and

¹ The FM priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

modified the Station KTWA license to specify operation on Channel 224C2. In doing so, we determined that this upgrade would result in Station KTWA serving an additional 38,492 persons in an area of 3,757 square kilometers without any area losing service. In comparison, and after our review of the Galesburg Broadcasting Comments, it was determined that the proposed upgrade by Station WLSR in Galesburg would serve an additional 38,591 persons in an area of 2,464 square kilometers, while 1,434 persons in an area of 175 square kilometers would lose service. As such, the net gain in service would be 37,157 persons. These calculations were in substantial agreement with the calculations set forth by Galesburg Broadcasting in its Comments.²

4. In its Petition for Reconsideration, Galesburg Broadcasting argues, for the first time, that the minimum spacing requirements set forth in Section 73.207(b) of the Rules affords a Class B1 station operating at maximum facilities protection to its 57dBu contour. Since the 57 dBu contour extends further than the 60 dBu contour, the proposed Class B1 upgrade for Station WLSR would provide service to a greater population and area than that which was indicated in the Report and Order. In comparison, a Class C2 station operating at maximum facilities provides service to only the 60 dBu contour. Under these circumstances, its proposed Class B1 upgrade for Station WLSR would represent a greater net service gain compared to the competing Station KTWA upgrade in Ottumwa.

5. We deny the Petition for Reconsideration. Galesburg Broadcasting is setting forth new information with respect to the service contour of Station WLSR and the population within that contour. Section 1.429(b) of the Rules provides that petitions for reconsideration relying upon facts not previously submitted will be granted only under three limited circumstances. First, the facts relate to events which have changed since the last opportunity to present these facts to the Commission. Second, the facts were unknown to the petitioner and could not have been timely ascertained through the exercise of ordinary diligence. Third, the Commission determines that the consideration of these facts is required by the public interest. Galesburg Broadcasting has not provided a basis to consider new information in this proceeding. Assuming that Station WSLR would operate at maximum facilities, the fact that Station WLSR could provide service to its 57 dBu contour is a matter that could have been timely submitted through the exercise of ordinary diligence. In fact, Galesburg Broadcasting submitted Comments contradicting this statement and indicating that its proposed upgrade would provide service to only the 60 dBu contour.³ We also do not believe that consideration of this new material is required by the public interest. Galesburg will continue to have local service from Station WSLR and the population and area that would have been served by a Class B1 upgrade will continue to receive at least five aural services.⁴ In this situation, we also believe that it would not be in the public interest to allow a party to sit back and hope a decision will be in its favor, and when not, to parry with additional submissions. No Commission process could operate

² In its Comments, Galesburg Broadcasting states that the Station WLSR upgrade would bring service to an additional 38,553 persons in an area of 2,361 square kilometers with 1,993 persons in an area of 282 square kilometers losing service. According to Galesburg Broadcasting, there would be a net gain in service to 36,560 persons.

³ In this regard, we note that the Commission has determined that the 60 dBu (1 mv/m) contour is the exclusive standard for comparing stations' areas of service. Greenup, Kentucky and Athens, Ohio, 4 FCC Rcd 3843 (1989), rev. 6 FCC Rcd 1493 (1991).

⁴ The Commission has determined five reception services to be "abundant" service. See Family Broadcasting Group, 53 RR2d 662, 669 (Rev. Bd. 1983), rev. denied, FCC 83-559 (Comm'n Nov. 29, 1983); see also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

efficiently or expeditiously if such a procedure were allowed. Cf. Colorado Radio Corp. v. Federal Communications Commission, 118 F2d 24 (D.C. Cir. 1941).

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Galesburg Broadcasting Company IS DENIED.

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

8. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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