

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. 90-195
FM Broadcast Stations.)	RM-7152
(Brookline, Missouri))	
)	
)	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: April 11, 2001

Released: April 20, 2001

By the Chief Allocations Branch:

1. The Allocations Branch has before it a petition for reconsideration of the *Report and Order* (“*R&O*”) in this proceeding, 10 FCC Rcd 13038 (1995), filed by Lake Broadcasting (“Lake”), licensee of Station KBMX(FM), Channel 270A, Eldon, Missouri, and permittee of Station KFXE(FM), Channel 271A, Cuba, Missouri. Lake subsequently filed a motion to dismiss petition for rulemaking and set aside the *R&O*. Brookline Broadcasting (“BB”) and KSOP Partnership (“KSOP”), applicants for a construction permit on 271A at Brookline, Missouri, filed separate oppositions to Lake’s motion to dismiss; and Lake filed a consolidated reply to the oppositions.

2. At the request of Laurie L. Ankarlo, the *R&O* allotted Channel 271A at Brookline, Missouri, as a first local service over the objections of Stereo Broadcasting, licensee of Station KTXR(FM), Springfield, Missouri, and determined that Brookline was a community for allotment purposes. The *R&O* also acknowledged that the reference coordinates for Channel 271A at Brookline conflict with one of two options proposed in a petition for reconsideration in MM Docket 89-120 filed by Lake. The *R&O* explained that Lake’s petition for reconsideration in MM Docket 89-120 was being held in abeyance pending the outcome a revocation hearing involving all of Lake’s stations in MM Docket 95-154. Nevertheless, we did not defer allotting Channel 271A at Brookline and opening a filing window because Lake had stated in its reconsideration petition in MM Docket 89-120 that it would also be willing to accept a Class C2 upgrade at Eldon, which did not conflict with the allotment of Channel 271A at Brookline.

3. Lake’s Petition for Reconsideration. The gravamen of Lake’s reconsideration petition is that the *R&O* prejudices Lake’s reconsideration petition in MM Docket 89-120 because it conflicts with its counterproposal to upgrade its Station KBMX from Channel 270A to Channel 270C1 at Eldon. We will dismiss Lake’s reconsideration petition in the Brookline proceeding as moot because we recently dismissed Lake’s reconsideration in MM Docket 89-120, finding that Lake’s license for the Eldon station, as well as other stations controlled by Michael Rice, were revoked. Furthermore, the U.S. Court of Appeals for the D.C. Circuit had affirmed the revocations, and that the U.S. Supreme Court recently denied certiorari. See *Memorandum Opinion and Order*, DA 01-930, released April 13, 2001, citing *Contemporary Media, Inc v. FCC*, 214 F. 3d 187 (D.C. Cir 2000), cert. denied, 532 U.S. (2001).

4. Lake's Motion. Lake requests that the initial rulemaking petition filed in this proceeding by Ankarlo be dismissed and that the *R&O* be set aside because Ankarlo did not file an application for Channel 271A at Brookline during the filing window and did not file an opposition to Lake's reconsideration petition. Even though four other parties filed applications for the Brookline allotment, Lake argues that they should not be considered valid expressions of interest in the allotment because the basis for the allotment was Ankarlo's expression of interest. Both KSOP and BB filed oppositions, disagreeing with Lake's argument. KSOP asserts that Lake is in effect seeking the deletion of the Brookline allotment and that the Commission has consistently held that the filing of any application, even if not by the original proponent of the channel, is sufficient to defeat a request for a deletion of the channel. BB also argues that the existence of the applications for the Brookline allotment precludes deletion of the channel. In its consolidated reply, Lake reiterates that the applications filed for the Brookline allotment are not valid expressions of interest because the filing window was opened based upon Ankarlo's expression of interest and alleges that a channel can be deleted if the filing window was erroneously opened.

5. We reject this argument and deny Lake's motion. It is well established policy that if the original petitioner for an allotment fails to file an application but other parties file applications during the filing window, we will not delete the allotment because there is an interest in activating the channel. The fact that the original rulemaking petitioner did not file an application does not negate the timely filed applications filed by other parties who relied upon the *R&O*. See, e.g. *Arnold and Columbia, CA*, 13 FCC Rcd 18894, 18897 (Policy and Rules Division 1998), denying reconsideration, 7 FCC Rcd 6302 (1992). See also *Lexington, MI*, 7 FCC Rcd 2102 (Policy and Rules Division 1992), denying reconsideration 4 FCC Rcd 2639 (Allocations Br. 1989) (the filing of an application for an allotted channel constitutes an expression of interest in the channel and deletion of the allotment would be contrary to the public interest).¹

Indeed, in the instant case as in *Arnold*, a construction permit (BPH-19960112MD) has been granted for Channel 271A at Brookline. Finally, we believe that the allotment was properly made in the *R&O* based upon Ankarlo's interest in the channel set forth in her rulemaking petition and in her comments which contained the requisite continuing expression of interest.

6. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Lake Broadcasting, Inc., IS DISMISSED AS MOOT.

7. IT IS FURTHER ORDERED, That the motion to dismiss petition for rule making and set aside Report and Order IS DENIED.

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

¹ Lake also appears to argue that our decision in *Oakdale and Campti, LA*, 7 FCC Rcd 7600 (1992), should not be interpreted to treat the four applications for the Brookline allotment as timely expressions of interest in the frequency. We disagree. In *Oakdale*, we compared two mutually exclusive allotment proposals and granted a new allotment to Campti as a first local service over the upgrade of an Oakdale station. On reconsideration, we granted the Oakdale upgrade and deleted the Campti allotment because neither the Campti rulemaking proponent nor any other party filed an application during the filing window. Under these circumstances, we concluded that the rulemaking proponent had effectively abandoned its interest in the allotment and that the public interest would be better served by granting the counterproposal and permitting an existing station to upgrade. We believe that the facts of the Brookline proceeding are clearly distinguishable because applications were filed during the filing window, and as indicated above, a construction permit was ultimately granted. Under these circumstances, there has been no abandonment of interest in the allotment.

9. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 418-2120.

FEDERAL COMMUNICATIONS COMMISSION

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