

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

In the matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(West Hurley, Rosendale and Rhinebeck,
New York, and North Canaan and
Sharon, Connecticut)
MM Docket No. 97-178
RM-8329
RM-8739
RM-10099

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 11, 2001

Released: July 20, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making and Order to Show Cause in this proceeding. 12 FCC Rcd 11978 (1997). Radio South Burlington, Raymond A. Natole, Eric Straus, Sacred Heart University, Inc. ("Sacred Heart"), Aritaur Communications, Inc. ("Aritaur Communications"), and Historic Hudson Valley Radio, Inc. filed Comments. State University of New York ("SUNY") filed Comments and a Counterproposal. Sacred Heart, SUNY, and Aritaur Communications filed Reply Comments. Eric Straus, SUNY and WMHT Educational Telecommunications filed Reply Comments in response to the Counterproposal. For the reasons discussed below, we are allotting Channel 273A* to Rhinebeck, New York. We are reserving this allotments for noncommercial educational use.

Background

2. The Notice set forth two mutually exclusive Petitions for Rule Making. Raymond Natole proposed the allotment of Channel 255A to West Hurley, New York, as a first local service. Sacred Heart proposed the allotment of Channel 277A* to North Canaan, Connecticut, as a reserved noncommercial educational channel, as a first local service. In order to accommodate Channel 277A* at North Canaan, Sacred Heart proposed the substitution of Channel 273A for Channel 277A at Sharon, Connecticut, and modification of the Station WQQQ license to specify operation on Channel 273A. To accommodate the Channel 273A allotment at Sharon, Sacred Heart also proposed the substitution of Channel 255A for vacant but applied-for Channel 273A at Rosendale, New York. The Channel 255A substitution at Rosendale is in conflict with the proposed Channel 255A allotment at West Hurley.

3. In response to the Notice, SUNY filed a Counterproposal proposing the allotment of Channel 273A* to Rhinebeck, New York, reserved for noncommercial educational use, as a first local service. To accommodate Channel 273A* at Rhinebeck, it is likewise necessary to substitute Channel 255A for Channel 273A at Rosendale. In addition, the proposed Channel 273A* allotment at Rhinebeck is in conflict with the proposed Channel 273A substitution at Sharon necessary to accommodate the proposed Channel 277A* allotment at North Canaan. As such, the proposed Channel 273A* allotment at Rhinebeck and the proposed Channel 277A* allotment at North Canaan are mutually exclusive.

4. We are allotting Channel 273A* to Rhinebeck, New York.¹ This will provide a first local service to a community of 7,558 persons. Rhinebeck is incorporated, listed in the U.S. Census and governed by a town council. As the larger community, the Rhinebeck proposal would be favored over the smaller communities of West Hurley with a population of 2,252 persons, and North Canaan with a population of 3,284 persons. See West Liberty and Richwood, Ohio, 6 FCC Rcd 6068 (1991); Three Oaks and Bridgman, Michigan, 5 FCC Rcd 1004 (1990); Clarksville and Lanesville, Indiana, 4 FCC Rcd 4968 (1989). As proposed, we are reserving the channel for noncommercial educational use. Our engineering review confirms that due to the operation of television Station WRBG, Channel 6, Schenectady, New York, there are no FM channels in the reserved noncommercial educational band (201A to 220A) available at Rhinebeck. In order to accommodate Channel 273A* at Rhinebeck, we are substituting Channel Channel 255A for vacant Channel 273A at Rosendale, New York.² We are allotting Channel 273A* at a reference site closer to Rhinebeck which will obviate any issue with respect to compliance with Section 73.315(a) of the Rules or line-of-site from the transmitter site to Rhinebeck.

5. Aritaur Communications and Eric Straus, applicants for the Channel 273A allotment at Rosendale, filed Comments in support of the proposed Channel 255A allotment at West Hurley. In its Comments, Aritaur Communications notes that both the Channel 277A* allotment at North Canaan and the Channel 255A allotment at Rosendale require site restrictions. For this reason, along with the fact that the channel substitution at Rosendale requires each of the applicants to amend their respective applications to specify the new channel and transmitter site, Aritaur Communications supports the West Hurley proposal. In a separate vein, Eric Straus supports that West Hurley proposal because, as a commercial allotment, it will generate auction revenue while the noncommercial educational allotments at North Canaan and Rhinebeck will not. Neither argument warrants allotting a single Channel 255A to West Hurley at the expense of new allotments at either North Canaan and Rhinebeck. In regard to the Rosendale applicants being required to amend their respective applications to specify a new channel and transmitter site, we note that the Sacred Heart Petition for Rule Making proposing the Channel 255A substitution at Rosendale was filed prior to the filing of the Rosendale applications. In accordance with Section 73.208 of the Rules, these applicants are not entitled to have their individual transmitter site preferences protected by an earlier rulemaking proposal. See also Conflicts Between Applications and petitions for Rule making to Amend the FM Table of Allotments, 6 FCC Rcd 7346 (1991). In regard to the second matter, the Eric Straus reference to a loss of auction revenue does not warrant a West Hurley allotment in view of the significant public interest benefits of two new allotments, and the Commission's long-standing policy of permitting a reservation of a commercial channel for noncommercial educational use due to television Channel 6 preclusion. In implementing the auction process, the Commission did not set forth any basis to obviate either of these determinations. See Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses, 13 FCC Rcd 15920 (1998); recon denied, 14 FCC Rcd 8724 (1999); modified 14 FCC Rcd 12541 (1999).

6. Accordingly, pursuant to Section 4(i), 5©(1), 303(g) and ® 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 September 4, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

¹ The reference coordinates for the Channel 273A* allotment at Rhinebeck, New York, are 41-54-57 and 73-53-54.

² The reference coordinates for the Channel 255A allotment at Rosendale, New York, are 41-55-43 and 74-07-45. There are ten applications pending for the Channel 273A allotment at Rosendale. Each applicant will be permitted to amend its application without loss of cut-off protection.

<u>Community</u>	<u>Channel No.</u>
Rhinebeck, New York	273A*
Rosendale, New York	255A

7. A filing window for Channel 273A* at Rhinebeck, New York, will not be opened at this time. Instead, the issue of opening this allotment for application will be addressed by the Commission in a subsequent Order.

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

9. 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