

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-166
Table of Allotments,)	RM-9951
FM Broadcast Stations)	RM-10015
(Wickenburg, Bagdad and Aguila, Arizona))	RM-10016

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: August 15, 2001

Released: August 24, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a petition for reconsideration of the Report and Order ("R&O"), in this proceeding, 16 FCC Rcd 7970 (2001), filed on behalf of Circle S Broadcasting Co., Inc. ("Circle S"), licensee of Station KSWG(FM), Channel 231C3, Wickenburg, Arizona,¹ which inter alia, granted a mutually exclusive proposal to allot Channel 242C3 to Wickenburg as that community's third local FM transmission service.² No opposition was filed in response to Circle S' petition for reconsideration.

2. Background. In response to a petition for rule making filed on behalf of Wickenburg Broadcasting ("WB"), the Commission issued a Notice of Proposed Rule Making ("Notice"), proposing the allotment of Channel 242C3 to Wickenburg, as its third local FM transmission service. See 15 FCC Rcd 17335 (2000). In response to the Notice, Bagdad Broadcasting Company ("BBC") (RM-10015), requested the allotment of Channel 242C3 to Bagdad, Arizona, as that community's second local FM service. Circle S (RM-10016), requested the substitution of Channel 242C3 as a replacement for Channel 231C3 at Wickenburg, and modification of its license, as well as the allotment of Channel 231C3 to Aguila, as that community's first local aural transmission service upon its deletion at Wickenburg.

3. The Report and Order. In response to the mutually exclusive proposals, alternate channels were located to accommodate the Bagdad and Aguila proposals and therefore, a comparative analysis of those proposals was not required. Specifically, the R&O allotted Channel 246C3 to Bagdad, and Channel 297C3 to Aguila, rather than Channel 231C3 as requested by Circle S. The R&O further determined that in order to provide Aguila with its first local aural transmission service, the allotment of Channel 297C3 to that community negated the need to consider the requested substitution of Channel

¹ Public Notice of the filing of the Circle S petition was given July 24, 2001 (Report No. 2498), 66 FR 145, July 27, 2001.

² The R&O also allotted Channel 246C3 to Bagdad, Arizona, as well as Channel 297C3 to Aguila, Arizona, as discussed infra.

242C3 for Circle S' current Channel 231C3 and modification of its license for Station KSWG(FM). Accordingly, Channel 242C3 was allotted to Wickenburg, as that community's third local FM transmission service, as requested by Wickenburg Broadcasting (RM-9951), as it triggered higher allotment priority three, whereas Circle S' modification proposal at Wickenburg triggered priority four.

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4. Petition for Reconsideration. Circle S seeks reconsideration of the R&O to the extent it allotted Channel 242C3 to Wickenburg as a new allotment, and requests the grant of its proposal to substitute Channel 242C3 for Channel 231C3 at Wickenburg and modify its license for Station KSWG. In support of its request, Circle S provided a statement from a principal of WB stating it no longer desires to file an application for Channel 242C3 at Wickenburg.⁴ Circle S asserts that the withdrawal of WB's interest, combined with the failure of any party to respond or object to its petition for reconsideration, further demonstrates abandonment of any interest in Channel 242C3 as a new allotment at Wickenburg. In light of the above, Circle S seeks the reversal of our decision allotting Channel 242C3 to Wickenburg as a new allotment and the grant of its modification proposal instead.⁵ Additionally, Circle S seeks either the deletion of Channel 231C3 at Wickenburg, or its retention in the event it is determined that an additional allotment should be made at that community.

5. Discussion. After consideration of Circle S' petition for reconsideration, we will grant its modification request. As no comments were filed in opposition to Circle S' request, and in view of the lack of any other expression of interest in pursuing the allotment of Channel 242C3 at Wickenburg, we modify our decision allotting the channel to that community as a new allotment. See Oakdale and Campti, Louisiana, 7 FCC Rcd 7600, 7601 (1992). Instead, as requested by Circle S, we will substitute Channel 242C3 for Channel 231C3 at Wickenburg and modify the license for Station KSWG accordingly. The Report and Order remains unchanged concerning the allotment of Channel 297C3 at Aguila and Channel 246C3 to Bagdad, Arizona. Additionally, Channel 231C3 will be deleted at Wickenburg as we received no expression of interest in retaining the channel for general application.

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local 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).

⁴ WB's statement also verifies that no consideration has been received nor promised in exchange for withdrawal of its interest in Channel 242C3 at Wickenburg.

⁵ Also, Circle S asserts that shortly before the Report and Order was released in this proceeding, Channel 297C3 was proposed for allotment at Quartzsite, Arizona, in MM Docket No. 01-70, and therefore the same channel could not be allotted to Aguila consistent with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules. However, the Report and Order in the referenced proceeding allotted Channel 275C3 to Quartzsite to avoid a conflict with our decision in this proceeding. See DA 01-1479, released

6. Channel 242C3 can be substituted for Channel 231C3 at the restricted site proposed in the Report and Order, located 6.2 kilometers (3.9 miles) northeast of the community at coordinates 34-01-01 NL and 112-41-46 WL. The restricted site requires Circle S to relocate its transmitter for Station KSWG to comply with the technical requirements of Section 73.207(b) of the Commission's Rules. However, Circle S indicated previously in its proposal that it would agree to change sites to that specified earlier in this proceeding, or to a similar fully spaced site, as it would eliminate the need for a directional antenna system for Station KSWG.

7. As Wickenburg, is located within 320 kilometers (199 miles) of the U.S.-Mexico border, Mexican concurrence has previously been requested for Channel 242C3. However, final notification approval has not been received from the Mexican government. Rather than delay Circle S' opportunity to file its modification application, we will substitute Channel 242C3 for Channel 231C3 at Wickenburg, at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the authorization will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico."

8. 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 9, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the Wickenburg, Arizona, to read as follows:

<u>City</u>	<u>Channel No.</u>
Wickenburg, Arizona	242C3, 287C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Circle S Broadcasting Co., Inc. for Station KSWG(FM), IS MODIFIED to specify operation on Channel 242C3 at Wickenburg, Arizona, in lieu of Channel 231C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That the Report and Order in this proceeding IS MODIFIED to the extent it allotted Channel 242C3 to Wickenburg, Arizona (RM-9951) as that community's third local FM transmission service for general application, and the Petition for Reconsideration filed by Circle S Broadcasting, Inc., seeking the substitution of Channel 242C3 for Channel 231C3 and modification of its license for Station KSWG(FM) (RM-10016) IS GRANTED.

11. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Memorandum Opinion and Order by Certified Mail, Return Receipt Requested, to Circle S Broadcasting, Co., Inc., 801 West Wickenburg Way, Wickenburg, Arizona 85390.

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

13. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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