

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. 99-141
FM Broadcast Stations.)	RM-9339
(Monticello, Arkansas and Bastrop, Louisiana))	

REPORT AND ORDER (Proceeding Terminated)

Adopted: March 21, 2001

Released: March 30, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rulemaking and Order to Show Cause* issued at the request of Midway Broadcasting Company, who was succeeded in interest by Community Radio Network, Inc., licensee of Station KHBM-FM, Monticello, Arkansas, pursuant to an application for assignment of license (“petitioner”).¹ The *Notice* sought comment on petitioner’s proposal to substitute Channel 229C2 for Channel 229C3 at Monticello, Arkansas, and modify its authorization accordingly. To accommodate this modification, we issued an *Order to Show Cause* to the licensee of Station KTRY-FM, Bastrop, Louisiana, to show why the Commission should not substitute Channel 230A for vacant Channel 230C3 at Bastrop, and modify the license of Station KTRY-FM, currently operating on Channel 232A, to specify operation on Channel 230A, or, in the alternative, modify the allotment for Channel 230C3 at Bastrop to reference coordinates that are compatible with petitioner’s proposal at Monticello.² Petitioner filed comments stating that it would file the necessary applications to effectuate the modifications for Station KHBM-FM as requested in this matter. Petitioner also filed reply comments. Jamie Patrick Broadcasting, Ltd. (“Patrick”), licensee of Station KTRY-FM, Bastrop, Louisiana, did not respond to the *Order to Show Cause*.³

2. As noted in the *Notice*, Station KTRY-FM, currently operating on Channel 232A, was modified to Channel 230C3 by one-step application. Although its construction permit for Channel 230C3 was ultimately cancelled,⁴ Station KTRY-FM was modified to that channel, and cannot continue to hold Channel 232A.⁵ Indeed, as noted in the *Notice*, Channel 232A at Bastrop is now short-spaced to the

¹ See File No. BALH-990329GK, granted on May 19, 1999 and consummated on June 1, 1999.

² The *Notice* proposed a site for Channel 230C3 at Bastrop Louisiana at coordinates 32-49-06 NL and 91-54-29 WL

³ Commission records contain the return receipt for the certified letter, signed by Henry Cotton, President of Jamie Patrick Broadcasting, Ltd.

⁴ See *Notice* note 2.

⁵ See *Report and Order* in MM Docket 92-159 (FM Channel and Class Modifications by Application), 8 FCC Rcd 4735, 4737, note 18.

licensed operation of Station WBAD(FM), Channel 232A, Leland, Mississippi. Patrick filed its most recent application to effectuate its modification to Channel 230C3 on April 23, 1999,⁶ a minor change application.⁷ Petitioner filed an informal objection to that application, stating that the application was technically defective and inconsistent with its proposal in this docket.

3. Petitioner argues that Patrick must be downgraded to 230A rather than modified on 230C3 to the site proposed in the *Notice* because Patrick failed to respond affirmatively to the *Order to Show Cause*. Petitioner states that if Patrick is downgraded to Channel 230A, it will reimburse it for its expenses of changing channels as required under *Circleville, Ohio*.⁸ Petitioner states, however, that it is unwilling to reimburse Patrick for relocating to a site that clears Station KHBM-FM on Channel 230C3, because it should not be obligated to compensate Patrick for a significant improvement in its facilities.

4. We believe that petitioner's proposal will serve the public interest and should be granted. The substitution of Channel 229C2 for Channel 229C3 at Monticello, Arkansas, and modification of Station KHBM-FM to reflect operation on the higher class channel will enable Station KHBM-FM to provide 1.0 mV/m service to 71,651 persons comprising 8,559.5 square kilometers, representing an increase of 17,522 persons in 3,789.4 square kilometers over its authorized facility at Monticello. In addition, petitioner states that Station KTRY-FM will serve an additional 6,330 persons if it is modified from Channel 232A to operation on Channel 230A at Bastrop, Louisiana.

5. We agree with petitioner that Patrick's application for Station KTRY-FM to effectuate Channel 230C3 is defective and should have been dismissed, and we do so in this proceeding. Although Patrick signed the cover letter, Patrick's application failed to include Section VII, entitled "Certifications," which must be signed by an authorized officer of the licensee. This failure constitutes a "Tier One" minimum filing requirement defect and thus the application was subject to return under Section 73.3564(a)(2).⁹

6. We also agree with petitioner that Patrick's failure to respond to the *Order to Show Cause* constrains our action here to the substitution of Channel 230A for 232A and the deletion of Channel 230C3 at Bastrop. Although Patrick expressed an intention to effectuate its upgrade to Channel 230C3 by filing its application for Channel 230C3 at Bastrop, it was an insufficient effort and proposed a site which does not work with petitioner's proposal. Since Patrick never amended its application or responded to the *Order to Show Cause*, we must modify it to Channel 230A in this proceeding and note that Patrick is free to refile a one-step application in the future. Petitioner is ordered to reimburse Patrick for its associated costs for changing channel under *Circleville*.

7. Accordingly, we will substitute Channel 229C2 for Channel 229C3 at Monticello, Arkansas, and modify the license for Station KHBM-FM to reflect the upgrade. Channel 229C2 can be allotted at Monticello at petitioner's requested site located 23.3 kilometers (14.5 miles) northeast of the

⁶ We note that the *Notice* in this docket was released on April 20, 1999.

⁷ See File No. BPED-990514IE.

⁸ 8 FCC Rcd 159 (1968).

⁹ See *Report and Order* in MM Docket No. 91-347, Appendix C, Item 2, and Appendix 2, page 23, 57 FR 34872 (August 7, 1992); see also Section 73.3564(a)(2) of the rules which provides that an application failing to meet any one of the items in Tier One is subject to return

community.¹⁰ We will also substitute Channel 230A for 232A and delete Channel 230C3 at Bastrop, Louisiana, and modify the license for Station KTRY(FM) to specify Channel 230A at the station's existing site.¹¹

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 June 14, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel</u>
Monticello, Arkansas	229C2, 260C3
Bastrop, Louisiana	230A 247A, 261C2 ¹²

9. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

Jamie Patrick Broadcasting, Ltd. 328 West Madison Avenue Bastrop, LA 71220 (Licensee of Station KTRY-FM)	Community Radio Network, Inc. 539 W. Gaines Monticello, AR 71655 (Licensee of Station KHBM-FM)
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10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Community Radio Network, Inc. IS MODIFIED to specify operation on Channel 229C2, at Monticello, Arkansas, and the license of Station KTRY(FM), Bastrop IS MODIFIED to specify operation on Channel 230A 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.

11. IT IS FURTHER ORDERED That Patrick's minor change application for construction permit, File No. BPED-990514IE IS DISMISSED.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the

¹⁰ The coordinates for Channel 229C2 at Monticello, Arkansas, are 33-43-44 NL and 91-34-04 WL.

¹¹ The coordinates for Channel 230A at Bastrop, Louisiana are 32-49-10 NL and 91-54-29 WL.

¹² We note that the FM Table of Allotments will be amended to reflect the removal of both Channel 232A and Channel 230C3 at Bastrop.

request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Community Radio Network, Inc. is required to submit rule making fees in addition to the fees required for the application to effectuate the upgrade at Monticello.

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

14. For further information on this proceeding, contact Victoria M. McCauley, Mass Media Bureau at (202) 418 2180. Questions concerning the application filing process should be addressed to the Audio Services Division at (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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