

**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) ¹)	RM-10016

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 4, 2001

Released: April 13, 2001

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making (“Notice”), 15 FCC Rcd 17335 (2000), issued in response to a petition for rule making filed on behalf of Wickenburg Broadcasting (“petitioner”), proposing the allotment of Channel 242C3 to Wickenburg, Arizona, as that community’s third local FM transmission service. Petitioner filed supporting comments in response to the Notice. Comments and counterproposals were filed on behalf of Bagdad Broadcasting Company (“BBC”) (RM-10015), and by Circle S. Broadcasting, Co., Inc. (“Circle S”) (RM-10016), licensee of Station KSWG(FM), Channel 231C3, Wickenburg.² Reply comments were filed by BBC and Circle S. No other comments were received.

2. BBC requests the allotment of Channel 242C3 to Bagdad, Arizona, as that community’s second local FM service. BBC states that the addition of Channel 242C3 at Wickenburg would result in the provision of a third local service at that community, whereas its proposal would provide a second local FM service at Bagdad and therefore would result in a preferential arrangement of allotments.³ BBC states that it will apply for Channel 242C3 if allotted to Bagdad.

3. Circle S proposes the substitution of Channel 242C3 as a replacement for its present operation on Channel 231C3 at Wickenburg, and modification of its license accordingly. Additionally, Circle S requests the allotment of Channel 231C3 to Aguila, as a first local aural service to that community. In support of the Aguila proposal, Circle S states that although Aguila is not listed in the U.S. Census, it qualifies as a bona fide community for allotment purposes, citing Columbia City, Florida, 15 FCC Rcd 23725 (2000); Westly, California, 13 FCC Rcd 2470 (1998); Willows and

¹ The communities of Badgad and Aguila, Arizona, have been added to the caption.

² Public Notice of the counterproposals was given on December 5, 2000, Report No. 2453.

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) area given co-equal weight. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

Dunnigan, California, 10 FCC Rcd 11522, 11523 (1995); Kenansville, Florida, 5 FCC Rcd 2663 (1990), rev. denied, 10 FCC Rcd 9831; Semora, North Carolina, 5 FCC Rcd 934, 935 (1990); Beacon Broadcasting, 2 FCC Rcd 3469, recon. denied, 2 FCC Rcd 7562 (1987); Seven Locks Broadcasting Co., 37 FCC 82 (1964). In this regard Circle S reports that Aguila has a population of approximately 600 persons according to the Rand McNally Road Atlas. Also, Aguila has its own telephone exchange with over 300 separate residential listings in the U.S. West telephone directory. Additionally, Circle S reports that Aguila has its own school district, library, fire department, community center, churches, water district, Head Start program, restaurants, two airparks, numerous commercial businesses, and lodging facilities. Circle S also provided statements of Aguila residents stating that they regard themselves as a distinct group deserving of a broadcast station. As Aguila has a measurable population grouping, and possesses numerous community indicia, Circle S asserts that the requested allotment of Channel 231C3 to that community as its first local aural transmission service must be preferred over the addition of a fourth local service to Wickenburg, pursuant to the Commission's allotment criteria.⁴ Circle S advises that it will apply for Channel 231C3 if allotted to Aguila, and will also file an application for Station KSWG to specify operation on Channel 242C3 at Wickenburg.

4. In response to BBC's counterproposal, Circle S comments while Aguila currently lacks any local aural broadcast service, whereas Bagdad does have an allotment, its proposal to allot Channel 231C3 to Aguila as that community's first local service, coupled with the requested substitution of Channel 242C3 for its present operation on Channel 231C3 at Wickenburg, should be preferred over the addition of Channel 242C3 as an additional FM service at either Wickenburg or Bagdad. However, Circle S avers that as the public interest would ultimately benefit by accommodating new channel allotments at both Aguila and Bagdad, it suggests that alternate channel selections are available to Bagdad, including Channel 226C3 or Channel 237C3. Circle S asserts that use of an alternate channel at Bagdad will enable its proposal at both Wickenburg and Aguila to be accommodated.

5. In response, BBC advises that its proposal to allot Channel 242C3 to Bagdad as its second local FM service is superior to the proposed allotment of Channel 242C3 at Wickenburg as its third local FM service. Further, BBC remarks that the Circle S proposal is inconsistent with the provisions of § 1.420(i) of the Commission's Rules as its proposed move from Channel 231C3 at Wickenburg to Channel 242C3 at that community is not mutually exclusive with its present assignment and would open it to competing expressions of interest. BBC adds that although the requested allotment of Channel 231C3 at Aguila would be mutually exclusive with Circle S's present allotment, Circle S has not proposed to move its facilities to that channel and therefore § 1.420(i) is inapplicable. Moreover, BBC avers that the Circle S proposal to allot Channel 231C3 at Aguila is not technically mutually exclusive with the proposal advanced in the Notice. BBC remarks that although the Circle S proposal appears to be an effort to restrain competition with its Wickenburg Station KSWG, its proposal has opened its existing channel to competing expressions of interest. As a result, BBC advises that if the Circle S proposal is granted, it will apply for and construct FM facilities on Channel 242C3 at Wickenburg and at Aguila. In the event the Circle S proposal is rejected, BBC urges that on a comparative basis, its proposal to allot Channel 242C3 to Bagdad as its second local FM service is

⁴ AM Station KBSZ is licensed at Wickenburg.

superior to the proposed allotment of Channel 242C3 at Wickenburg as its third local FM service.

6. Initially, we find that the Circle S proposal to substitute Channel 242C3 for its current operation on Channel 231C3 at Wickenburg is mutually exclusive with Channel 242C3 proposed in the Notice. Also, the requested allotment of Channel 231C3 at Aguila to accommodate its counterproposal comprises an interrelated component and therefore its counterproposal is valid.

7. As discussed below, we are allotting alternate Channel 297C3 to Aguila. As such, it is no longer necessary to consider the proposed Channel 242C3 substitution advanced by Circle S. Therefore, we are allotting Channel 242C3 to Wickenburg as proposed in the Notice.

8. We next examine BBC's requested allotment of Channel 242C3 to Bagdad instead of Wickenburg. Conflicting proposals are generally considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, *supra*. However, in this case, a staff engineering study has determined that alternate Channel 246C3 is available for allotment at Bagdad, and therefore, we need not compare the needs of the two communities. Therefore, as stated in the Notice, Channel 242C3 can be allotted to Wickenburg at a restricted site located 6.2 kilometers (3.9 miles) northeast of the community at coordinates 34-01-01 NL and 112-41-46 WL. Channel 246C3 can be allotted to Bagdad consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules with a site restriction 2.4 kilometers (1.5 miles) north of the community at coordinates 34-36-11 NL and 113-12-04 WL.

9. Also, based upon the interest Circle S expressed in providing a first local service at Aguila, we will also entertain the allotment of an FM channel there premised upon the information presented to demonstrate that Aguila is a bona fide community for allotment purposes. A staff engineering study has determined that alternate Channel 297C3 is available for allotment at Aguila. Channel 297C3 can be allotted to Aguila in compliance with the Commission's Rules without a site restriction at coordinates 33-56-34 NL and 113-10-24 WL.

10. As Wickenburg, Bagdad and Aguila are all located within 320 kilometers (199 miles) of the U.S.-Mexico border, Mexican concurrence has been requested for Channels 242C3, 246C3 and 297C3, at those communities, respectively. However, final notification approval has not been received from the Mexican government. Rather than delay the opportunity to file applications, we will allot Channel 242C3 at Wickenburg, Channel 246C3 at Bagdad, and Channel 297C3 at Aguila, at this time. If construction permits are granted prior to the receipt of formal concurrence in the allotments by the Mexican government, the authorizations 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."

11. 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 May 29, 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:

<u>City</u>	<u>Channel No.</u>
Aguila, Arizona	297C3
Bagdad, Arizona	246C3, 276C3
Wickenburg, Arizona	231C3, 242C3, 287C2

12. The window period for filing applications for the above allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent Order.

13. IT IS FURTHER ORDERED, That the counterproposal filed on behalf of Circle S Broadcasting, Inc. (RM-10016) IS DENIED in part, to the extent it requested the substitution of Channel 242C3 for Channel 231C3 at Wickenburg, Arizona and the modification of its license for Station KSWG(FM) accordingly.

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

15. For further information concerning the above allotments, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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