

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-240
Table of Allotments,)	RM-10843
FM Broadcast Stations.)	
(Daytona Beach Shores, Florida))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 6, 2005

Released: April 8, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“*Notice*”)¹, issued at the request of Carmine Tuteria (“*Petitioner*”), proposing the allotment of Channel 258A to Daytona Beach Shores, Florida, as that community’s first local aural transmission broadcast service. *Petitioner* filed comments reiterating an intention to apply for Channel 258A, if allotted to Daytona Beach Shores, as requested. No additional comments or counterproposals were received in response to this proceeding.

2. The *Notice* proposed the allotment of Channel 258A at Daytona Beach Shores, Florida, as its first local aural transmission broadcast service. The *Notice* requested the *Petitioner* to submit additional information demonstrating that Daytona Beach Shores is a “community” for allotment purposes. The *Notice* also requested *Petitioner* to address the issue of site availability for the proposed Daytona Beach Shores allotment because of its proximity to the Atlantic Intracoastal Waterway (Halifax River), the Atlantic Ocean, and numerous hotels and beachside attractions. Generally, at the allotment stage, we only require a petitioner to show that a theoretical reference site exists from which a station can be operated in compliance with the Commission’s rules. The reference site is presumed to be available and technically feasible but that presumption is rebuttable.²

3. In response to the *Notice*, *Petitioner* stated that Daytona Beach Shores has its own mayor, city council, finance director, and public safety director, and chamber of commerce. Daytona Beach Shores is also home of the Daytona Beach Shores Senior Center, which is a community focal point. Tourism is a main industry in Daytona Beach Shores. Moreover, Daytona Beach Shores is a city listed in the 2000 U.S. Census with a population of 4, 299 persons. Based on the information provided by the *Petitioner*, we conclude that Daytona Beach Shores is a “community” for allotment purposes.

4. In response to the *Notice*, *Petitioner* also stated that the coordinates set forth in the *Notice* for the allotment of Channel 258A at Daytona Beach Shores is an existing tower owned and operated by Public

¹ See *Daytona Beach Shores, Florida*, 19 FCC Rcd 10989 (MB 2004).

² *Montauk, New York*, 19 FCC Rcd 2089 (2004); *San Clemente California*, 3 FCC Rcd 6728 (MMB 1988), *appeal dismissed sub. nom.*; *Mount Wilson FM Broadcasters, Inc. v FCC*, 884 F.2d 1462 (D.C. Cir. 1989); *See also, San Clemente, California*, 10 FCC Rcd 8291 (1995).

Radio Inc., WAPN-FM, Holly Hill, Florida.³ To this end, we find that the Petitioner has provided sufficient information to rebut the presumption that the requested site is unavailable.

5. In view of the interest expressed in providing a first local aural transmission service to Daytona Beach Shores, we will allot Channel 258A to that community, as requested. As stated in the *Notice*, Channel 258A can be allotted to Daytona Beach Shores, consistent with the minimum distance separation requirements of the Commission’s Rules, provided there is a site restriction 10.1 kilometers (6.3 miles) northwest of the community at coordinates 29-15-06 NL and 81-02-29 WL.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective May 23, 2005, the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Daytona Beach Shores	258A

8. The window period for filing applications for Channel 258A at Daytona Beach Shores will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

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

10. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Assistant Chief
 Audio Division
 Media Bureau

³ The owner of the tower informed the Petitioner that the tower is available and will negotiate the lease space should Petitioner become the ultimate permittee of the proposed Daytona Beach Shores allotment.