

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 05-106
FM Broadcast Stations.)	RM-11196
(Milner, Ellaville, and Plains, Georgia))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 8, 2005

Released: November 10, 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 Linda A. Davidson (“*Petitioner*”) requesting the allotment of Channel 290A at Milner, Georgia, and Channel 290A at Plains, Georgia, as each community’s first local service. *Petitioner* filed comments and a Response to Southern Broadcasting’s ‘Motion to Deny or Dismiss Petition for Rulemaking.’ Radio Georgia, Inc., licensee of Station WTGA-FM, Channel 266A, Thomaston, Georgia and Southern Broadcasting Companies, Inc. (collectively “*Joint Parties*”) filed jointly a counterproposal. SSR Communications, Inc., (“*SSR Communications*”), proponent of Channel 295A at Americus, Georgia, in MB Docket No. 04-328 filed supporting reply comments. No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* proposed the allotment of Channel 290A at Milner, Georgia, as the community first local service² and Channel 290A at Plains, Georgia, as its first local service.³ To accommodate the proposed Milner allotment, the *Notice* proposed the substitution of Channel 232A for vacant Channel 290A at Ellaville, Georgia. *Petitioner* filed comments restating its interest in the proposed Milner and Plains allotments.

3. Prior to release of the *Notice*, Southern Broadcasting filed a Motion to Deny or Dismiss Petition for Rulemaking, which stated that the proposed Ellaville transmitter site was infeasible.⁴ In its

¹ *Milner, Ellaville, and Plains, Georgia*, 20 FCC Rcd 6073 (MB 2005).

² Plain is an incorporated town located in Plains County, Georgia listed in the 2000 U.S. Census with a population of 637 persons.

³ Milner is an incorporated city located in Lamar County, Georgia listed in the 2000 U.S. Census with a population of 522 persons.

⁴ The *Notice* indicated that Southern Broadcasting withdrew this argument because the FAA issued a Determination of No Hazard to Air Navigation (Aeronautical Study 2004-ASO-4213-OE for the proposed Ellaville site, but reserved the right to raise this argument again should FAA change its EMI policy. As such, the *Notice* stated that 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. *San Clemente California*, 3 FCC Rcd 6728 (MMB 1988), *appeal* (continued...)

Response, Petitioner argues that the proposed reference coordinates for Channel 290A at Milner is available and technically feasible due to the fact of the issuance of FAA's 'Determination of No Hazard to Air Navigation.' Moreover, Petitioner submitted an engineering exhibit demonstrating that replacement Channel 232A at Ellaville at the proposed reference coordinates covers the entire community of Ellaville in compliance with Section 73.315 of the Commission's rules.

4. In response to the *Notice*, The Joint Parties filed a counterproposal requesting the reallocation of Channel 266A from Thomaston to Milner, Georgia, as its first local service and modification of the Station WTGA-FM license accordingly. Additionally, the Joint Parties proposed the allotment of Channel 295A at Plains, Georgia, as its first local service; the allotment of Channel 290A at Oglethorpe, Georgia, as its first local service; and the substitution of Channel 232A for vacant Channel 290A at Ellaville, Georgia.

5. SSR Communications, proponent of Channel 295A at Americus, Georgia filed reply comments supporting the proposed allotment of Channel 295A at Plains, Georgia in lieu of Channel 295A at Americus, Georgia, which was allotted in MB Docket No. 04-328.⁵ SSR Communications filed comments, supporting the allotment of Channel 295A at Americus, Georgia on October 18, 2004. However, after reviewing the Joint Parties' counterproposal it prefers the allotment of Channel 295A at Plains rather than Americus. Therefore, if Channel 295A is allotted to Plains it seeks to file an application for a construction permit to operate a new FM commercial broadcast station in Plains.

6. **Discussion.** The Joint Parties' counterproposal is defective. Specifically, the proposed allotment of Channel 295A at Plains is short-spaced to Channel 295A at Americus, which was allotted in MB Docket No. 04-328. Under these circumstances, the counterproposal is untimely and unacceptable for consideration because the counterproposal had to be advanced prior to the October 18, 2004 comment deadline in MB Docket No. 04-328.⁶ A counterproposal must be capable of being effectuated when it is filed.⁷ We note that, although, SSR Communications filed reply comments in this proceeding stating that it prefers the proposed allotment of Channel 295A at Plains over Channel 295A at Americus, the entity never filed documentation withdrawing its expression of interest in the allotment of Channel 295A at Americus, Georgia pursuant to Section 1.420(j) of the Commission's rules. As such, we concluded that SSR Communication's expression of interest in the proposed Plains allotment is without merit because of the existence of the valid expression of interest filed for the Americus, Georgia allotment in MB Docket No. 04-328

7. We further find that the public interest would be served by allotting Channel 290A at Milner, Georgia, as its first local service⁸ and Channel 290A at Plains, Georgia, as its first local service.⁹ To

(...continued from previous page)

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).

⁵ *See Americus and Oglethorpe, Georgia*, 17 FCC Rcd 6676 (2002).

⁶ *See* 47 C.F.R. § 1.420(d); *see also Milford, Utah*, 19 FCC Rcd 10335 (MB 2004) and *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

⁷ *See Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181 (MMB 1997); and *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090 (MMB 1997).

⁸ Channel 290A can be allotted to Milner in compliance with the Commission's rules provided there is a site restriction of 11.9 kilometers (7.4 miles) northeast at coordinates 33-09-44 NL and 84-04-51 WL.

⁹ Channel 290A can be allotted to Plains in compliance with the Commission's rules provided there is a site restriction of 14.7 kilometers (9.1 miles) northeast at coordinates 32-06-51 NL and 84-16-10 WL.

accommodate the Milner allotment, we will also substitute Channel 232A for vacant Channel 290A at Ellaville, Georgia.¹⁰ We note that vacant Channel 290A at Ellaville, Georgia is listed as construction permit number FM030 in Auction 62 rescheduled for January 12, 2006. Accordingly, the auctioned winner must file for a construction permit for Channel 232A in lieu Channel 290A at Ellaville.

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

9. 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 December 27, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Ellaville, Georgia	232A
Milner, Georgia	290A
Plains, Georgia	290A

10. The window period for filing applications for Channel 290A at Milner, Georgia and Channel 290A at Plains, Georgia 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.

11. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

12. IT IS FURTHER ORDERED, That the counterproposal filed by the Joint Parties, IS DISMISSED.

13. 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

¹⁰ Channel 232A can be allotted to Ellaville in compliance with the Commission's rules provided there is a site restriction of 14.5 kilometers (9.0 miles) east at coordinates 32-16-53 NL and 84-09-52 WL.