

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Columbia, Missouri))

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: May 24, 2006

Released: May 26, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by The Curators of the University of Missouri (“Curators”) directed to the staff letter dated March 18, 2004, returning its Petition for Rule Making requesting the reservation of vacant FM Channel 252C2 at Columbia, Missouri for noncommercial educational (“NCE”) use.

2. **Background.** The Curators filed a petition requesting the reservation of vacant FM Channel 252C2 at Columbia, Missouri for NCE use. The petition was returned as unacceptable for consideration by staff letter action because it failed to meet the reservation criteria. Specifically, the staff analysis determined that the proposed NCE reservation request for vacant FM Channel 252C2 at Columbia, Missouri would not provide a first or second NCE radio service to at least ten percent of the population within the proposed service area.

3. In 2002, the Commission revised the criteria by which a rulemaking proponent may reserve an FM allotment for NCE use. Initially, this reservation process was limited to future allotment proceedings.¹ The Commission later extended the criteria to existing vacant FM allotments for which a *Notice of Proposed Rule Making* had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.² Under this expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220) and the proposal would provide a first and/or second NCE radio service to at least ten percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, provided that such population would exceed 2,000 persons.³

¹ In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (“*NCE Report and Order*”). Previously, the Commission would only reserve a channel in the non-reserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel, not technically precluded by domestic FM broadcast stations, could be used without causing prohibited interference to Channel 6 TV station(s) and/or to foreign allotments.

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”). In a Public Notice released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.² In response to the Public Notice, we received 129 petitions for the reservation of 91 allotments.

³ See 47 C.F.R. § 73.7002(b).

4. **Petition for Reconsideration.** The Curators requested reconsideration because the staff letter action did not address its waiver request of the ten percent population criterion. The Curators stated that the proposed noncommercial educational allocation would provide valued NCE service to a population of 301,506 persons and provide a second NCE service to over 22,000 persons, approximately seven percent of the population residing within the 1 mV/m contour. Moreover, none of the non-reserved channels in Columbia are allocated to NCE stations. The Curators argued that there are no channels available to establish an NCE station that would provide service within the proposed allocation's 1 mV/m coverage area. Therefore, the Curators claim that the grant of the requested waiver would restore Columbia's two and half year loss of radio service, resulting from the cancellation of Michael Rice's license for Channel 252C2 at Columbia.⁴ The Curators notes that it has filed a Petition for Reconsideration in response to the *NCE Second Report and Order* arguing that the reservation standards were impossible to meet in many communities. The Curators also filed a Petition to Rescind the *Public Notice* stating that the Commission's instructions concerning the reservation showing were contradictory and arbitrary. The Commission has not ruled on the Petition for Reconsideration or the Petition to Rescind.

5. **Discussion.** Section 1.429 of the Commission's rules sets forth the limited provisions under which the Commission will reconsider a rulemaking action. Reconsideration is warranted only if the Petitioner cites error of fact or law, or presents new facts or changed circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. The Curators have not met this burden. We find no good cause to depart from the ten percent criteria imposed by the Commission.⁵ In this regard, our staff analysis determined that Curators' proposal would provide a population of 297,583 persons with NCE service in which 20,161 persons (6.8 percent) would receive a second NCE service. This is well below the ten percent criteria. At this juncture, we will not waive the ten percent criteria that would, in effect, preclude any interested party participating in the underlying rulemaking proceeding from now participating in an FM auction for commercial Channel 252C2 at Columbia, Missouri. Accordingly, the Petition for Reconsideration is denied.

6. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

7. IT IS ORDERED, That the Petition for Reconsideration filed by The Curators of the University of Missouri IS DENIED.

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

9. 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

⁴ *See Michael S. Rice*, Memorandum Opinion and Order, 16 FCC Rcd 18394 (2001)

⁵ *See* 47 C.F.R. § 1.3.