

**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. )  
(Walnut Grove, Mississippi) )

**MEMORANDUM OPINION AND ORDER  
(Proceeding Terminated)**

**Adopted: May 31, 2006**

**Released: June 2, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by Crossgates Baptist Church (“Crossgates Baptist”) directed to the staff letter dated March 18, 2004, returning its Petition for Rule Making requesting the reservation of vacant FM Channel 244C2 at Walnut Grove, Mississippi, for noncommercial educational (“NCE”) use. For the reasons set forth below, we deny the petition for reconsideration.

2. **Background.** Crossgates Baptist filed a petition requesting the reservation of vacant FM Channel 244C2 at Walnut Grove, Mississippi for NCE use. The proposal was returned by staff letter action as unacceptable for consideration because it failed to meet the reservation criteria. In this regard, the staff found that the proposed NCE reservation of Channel 244C2 at Walnut Grove 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.<sup>1</sup> The Commission later extended the expanded 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*.<sup>2</sup> Under this expanded criteria, a proponent may reserve a vacant allotment if it demonstrates that it is technically precluded from using a reserved channel (Channels 201 through 220) and that the proposal would provide a first and/or second NCE radio service to at least 10 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.<sup>3</sup>

<sup>1</sup> *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 nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used in the noncommercial reserve band (Channels 201 through 220) without causing prohibited interference to a Channel 6 TV station or to a foreign broadcast station.

<sup>2</sup> *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*.<sup>2</sup> In response to the *Public Notice*, we received 129 petitions proposing the reservation of 91 allotments.

<sup>3</sup> See 47 C.F.R. § 73.202(a)(1)(ii).

4. **Petition for Reconsideration.** Crossgates Baptist filed a petition for reconsideration of the staff action. The petition included an engineering statement demonstrating that a NCE reservation of Channel 244C2 at the allotment site's reference coordinates, using maximum class facilities, would provide a first or second NCE service to 13.1 percent of the population within the proposed station's service area. The total population receiving a first or second NCE service under the proposal would be 16,571 persons, exceeding the 2000 persons required under the established criteria.

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. Crossgates Baptist has not met this burden.

6. The engineering study failed to include NCE Station WQST-FM, Channel 223C, Forest, Mississippi<sup>4</sup> in its first/second NCE service analysis. This facility along with nine other licensed NCE stations in the area would overlap the proposed primary service area of Channel 244C2 at Walnut Grove. As such, the proposed facility would only provide 8,524 persons (6.6 percent) of the total population of 129,359 persons with a first or second NCE service within the station's 60 dBu contour service area. Accordingly, the Petition for Reconsideration is denied.

7. 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.

8. IT IS ORDERED, That the Petition for Reconsideration filed by Crossgates Baptist Church IS DENIED.

9. IT IS FURTHER ORDERED, That the aforementioned 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

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<sup>4</sup> See File No. BMLED-19941021KZ.