

**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. )  
(Elgin and Lombard, Illinois) )  
 )

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

**Adopted: June 7, 2006**

**Released: June 9, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by Elgin Broadcasting Co., Inc. ("Elgin Broadcasting") directed to the staff letter returning its Petition for Rule Making.<sup>1</sup> For the reasons discussed below, we deny the Petition for Reconsideration.

2. Elgin Broadcasting, licensee of Station WJKL, Channel 232A, Elgin, Illinois, filed a Petition for Rule Making proposing the reallocation of Channel 232A from Elgin to Lombard, Illinois, and modification of the Station WJKL to specify Lombard as the community of license. Station WJKL is a pre-1964 grandfathered short-spaced station with respect to second adjacent channel Stations WZZN, Channel 234B, and WLIT, Channel 230B, Chicago, Illinois.<sup>2</sup> In its Petition for Rule Making, Elgin Broadcasting proposed increasing the existing short-spacing by relocating the Station WJKL transmitter from 52 kilometers to 26 kilometers from Stations WZZN and WLIT. In the staff letter, we determined that the Elgin Broadcasting Petition for Rule Making did not comply with Section 73.208 of the Rules that requires a proposal in a petition for rule making to comply with minimum separation requirements set forth in Section 73.207(b) of the Rules. For this reason, we returned the Petition for Rule Making.

3. In its Petition for Reconsideration, Elgin Broadcasting argues that under Section 73.213(a)(4) of the Rules, there are no required second or third adjacent separation requirements for pre-1964 grandfathered stations. In this regard, Elgin Broadcasting specifically refers to *Grandfathered Short-Spaced FM Stations* in which the Commission stated that it was not relaxing second and third adjacent channel separation requirements as allotment and assignment criteria for any group of FM stations except for pre-1964 grandfathered stations.<sup>3</sup> As such, there was no basis to return its Petition for Rule Making

<sup>1</sup> *Letter to William D. Silva from John A. Karousos, Assistant Chief, Audio Division, Media Bureau, (March 11, 2004).*

<sup>2</sup> Section 73.207(b)(1) of the Rules requires a separation of 95 kilometers (59 miles) between a Class A allotment and a second adjacent Class C allotment. Station WJKL is separated 52 kilometers (33 miles) from Stations WZZN and WLIT. Pre-1964 grandfathered stations are those FM stations authorized prior to November 16, 1964, that do not meet the separation distances required by the later adopted Section 73.207(b) and have remained continuously short-spaced since that time.

<sup>3</sup> *Grandfathered Short-Spaced FM Stations*, Report and Order, 12 FCC Rcd 11840 (1997).

involving pre-1964 second adjacent channel stations because of noncompliance with Section 73.208 of the Rules.

4. We deny the Petition for Reconsideration. It is Commission policy not to grant waivers of the spacing requirements in considering the allotment of an FM channel.<sup>4</sup> However, in *Newnan and Peachtree, Georgia*, we made a limited exception to this policy.<sup>5</sup> There, we reallocated Channel 244A from Newnan to Peachtree, Georgia, and modified the Station WMKJ license to specify Peachtree as the community of license. Station WMKJ was a pre-1964 grandfathered facility under Section 73.213 of the Rules that did not meet the current spacing requirements set forth in Section 73.207(b) of the Rules with respect to third-adjacent channel Station WKLS, Channel 241C, Atlanta, Georgia. The proposal in *Newnan* did not involve any change in the technical facilities of Station WMKJ. In taking that action, we recognized that we were creating a new short-spaced allotment in contravention of Section 73.207(b) of the Rules. In *Newnan*, we also stated that we would consider waiving the strict application of Section 73.207(b) in limited circumstances, provided that no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased. In this instance, waiver would not be appropriate. This proposal would significantly exacerbate the existing short spacing and, due to the proposed significant short spacing, result in interference to 25,377 persons.

5. Our action in this proceeding does not conflict with the 1997 Commission decision in *Grandfathered Short-Spaced FM Stations*. In *Grandfathered Short-Spaced FM Stations*, the Commission revised Section 73.213(a) of the Rules to permit pre-1964 grandfathered stations to file *applications* to implement maximum class facilities and/or change transmitter site without regard to second-adjacent and third-adjacent channel stations. The Commission has never used Section 73.213 as an allotment spacing rule. The *Grandfathered Short-Spaced FM Stations* Report and Order did not explicitly modify this policy or limit the applicability of Section 73.207 spacing requirements to FM allotment rulemaking proceedings involving pre-1964 grandfathered short-spaced stations. The rule, itself, mentions only application filings.<sup>6</sup> Moreover, the transition procedures adopted by the Commission in the 1997 order explicitly reference only pending applications.<sup>7</sup>

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Elgin Broadcasting Company, Inc., IS DENIED.

7. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief,  
Audio Division  
Media Bureau

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<sup>4</sup> See e.g., *Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990), *petition for review denied*, No. 90-1496 (D.C. Cir. June 6, 1991).

<sup>5</sup> *Newnan and Peachtree, Georgia*, Report and Order, (MMB 1992).

<sup>6</sup> See e.g., 47 C.F.R. § 73.213(a)(2) (“For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in the *application* must include exhibits....”) (emphasis added).

<sup>7</sup> See *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11857 n. 16.