

**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.)
(Key West, Florida))

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

Adopted: June 21, 2006

Released: June 23, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by Call Communications Group (“Call Communications”) directed to the staff letter dated March 18, 2004, returning its Petition for Rule Making requesting the reservation of vacant FM Channel 224A at Key West, Florida for noncommercial educational (“NCE”) use. For reasons discussed below, we are denying the petition for reconsideration.

2. **Background.** Call Communications filed a petition requesting the NCE reservation of vacant FM Channel 224A at Key West, Florida. The proposal was returned by staff letter as unacceptable for consideration because it failed to meet the revised reservation criteria. Specifically, the staff engineering analysis determined that the proposed NCE reservation of vacant Channel 224A at Key West 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 established revised 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 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*.² 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 ten percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, provided such population exceeds 2,000 persons.

¹ *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 band channel (Channels 201 through 220) could be used without causing prohibited interference to a Channel 6 TV station(s) or to a foreign broadcast station.

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*. In response to the *Public Notice*, we received 129 petitions for the reservation of 91 allotments.

4. **Petition for Reconsideration.** Call Communications argues that Station WJIR is the only licensed NCE station serving Key West, Florida. As such, Call Communications suggests that grant of its petition would provide a second NCE service to Key West, Florida, thus meeting the established criterion.

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. Call Communications has not met this burden.

6. We disagree with Call Communications' argument. NCE Stations WAZQ, Channel 202A, Key West, Florida³ and WKWR, Channel 211A, Key West, Florida⁴ both are licensed in the proposed service area, in addition to Station WJIR, Channel 215A, Key West, Florida.⁵ Accordingly, we find that the NCE reservation of vacant FM Channel 224A at Key West, Florida would not provide a first or second NCE service to at least ten percent of the population when all authorized stations are considered. 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 Call Communications Group 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

³ See File No. BLED-20050603AAK.

⁴ See File No. BLED-20051031ADJ.

⁵ We note that the staff engineering analysis originally included NCE Stations WAZQ and WKWR in its ten percent coverage calculations because both stations had authorizations to provide NCE coverage in the proposed service area. See *File Nos.* BMPED-20040224AAT and BPED-19980318MF, respectively. In this regard, we considered all authorized facilities when determining a first or second reception service preference. See *Greenup, Kentucky and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493, 1494 (1991).