

**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.)
(Franklin, Louisiana))

**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 Calvary of New Orleans directed to the staff letter dated March 4, 2004, returning its Petition for Rule Making requesting the reservation of vacant FM Channel 295C3 at Franklin, Louisiana for noncommercial educational (“NCE”) use.

2. **Background.** 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 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 10 percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, provided that such population exceeds 2,000 persons.³

3. In response to a *Public Notice*, requesting reservation showings, Calvary of New Orleans filed a petition to reserve vacant FM Channel 295C3 at Franklin, Louisiana for NCE use.⁴ The petition was returned as unacceptable for consideration by staff letter action because the proposal failed to meet the NCE reservation criteria. Specifically, the staff analysis determined that an alternate channel is available in the reserved portion of the FM band in Franklin.

4. **Petition for Reconsideration.** In support of its Petition for Reconsideration, Calvary of New Orleans submitted an engineering statement showing that no channels are available in the NCE band for

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 nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station(s) or to a foreign allotment.

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”).

³ See 47 C.F.R. § 73.202(a)(1)(ii).

⁴ See *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003) (“*Public Notice*”).

use at Franklin because no rule-compliant facility with maximum HAAT and ERP could be authorized at any of the four equally spaced locations on a hypothetical circle centered in Franklin, nor could a same-class rule-compliant facility be authorized at minimum HAAT and with minimum ERP on any reserved band channel at city center coordinates for Franklin. Specifically, the south (180°) and west (270°) sites on a hypothetical circle would be located in bodies of water, rendering them factually non-compliant. The north (0°) site and east (90°) site would be precluded because of existing licensed facilities and pending applications.

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.

6. A staff engineering analysis reveals that Channel 214C3 is available for use at Franklin at city reference coordinates, 29-47-42 NL and 91-30-12 WL, utilizing minimum facilities. Channel 214C3 meets the spacing requirements to TV Channel 6, WDSU, New Orleans, LA. Moreover, Channel 214C3 at city reference coordinates, utilizing minimum facilities, would not be precluded by existing licensed facilities and pending applications. In this regard, Calvary of New Orleans submitted a preclusion study, stating that Channel 214C3 is precluded by licensed NCE Station KIKL, Channel 215C3, Lafayette, Louisiana because of prohibited contour overlap. We disagree. A minimum Class C3 facility on Channel 214 at city reference coordinates would not cause prohibited contour overlap with respect to NCE Station KIKL. Accordingly, we find that Channel 214C3 is not technically precluded by NCE Station KIKL. Therefore, reservation of Channel 295C3 at Franklin is unwarranted. 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 Calvary of New Orleans 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

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