

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

In the matter of
Amendment of Section 73.202(b)
FM Table of Allotments,
FM Broadcast Stations.
(Augusta, Kentucky)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 4, 2006

Released: January 6, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed on behalf of Augusta/Bracken Broadcasting ("Petitioner") directed to a letter returning the Petition for Rule Making proposing a Channel 294A allotment at Augusta, Kentucky. An Opposition accompanied by a Motion to Accept Opposition to the Petition for Reconsideration was filed by Grant County Broadcasting ("GCB"), licensee of Station WNKR(FM), Channel 293A, Williamstown, Kentucky.

2. Background. On July 6, 2005, Petitioner's Petition for Rule Making was returned by letter because it was not consistent with Section 73.207(b)(1) of the Commission's Rules. Specifically, at the coordinates provided (38-49-56 NL and 83-51-37 WL), the site was short-spaced to the licensed and application sites for Station WNKR(FM), Williamstown, Kentucky.

3. Petition for Reconsideration. In the Petition for Reconsideration, the Petitioner argues that there was a typographical error in the reference coordinates provided in the Petition for Rule Making proposing the allotment of Channel 294A at Augusta, Kentucky, as the community's first local aural transmission service. Petitioner provided the correct coordinates (38-49-56 NL and 83-51-27 WL) and recognized that this site is still short-spaced to the application site for Williamstown, Kentucky (File No. 20050510AAI). Because the application was filed a day after the petition, Petitioner claims that under the procedures for the Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, the application should be considered as a counterproposal in the context of the instant proceeding.1 Petitioner also requested that its Petition for Rule Making be reinstated using the correct coordinates.

4. In its opposition, GCB reiterates that the original Augusta proposal was short-spaced to both the licensed and application sites for Station KNKR(FM) in Williamstown, Kentucky. In this regard, GCB argues that we should not prejudice its application by considering a corrected Petition for Rule Making.

5. Discussion. Reconsideration is warranted only if the Petitioner sets forth error of fact or law, or presents new facts or changed circumstances which raise substantial or material questions of fact which otherwise warrant reconsideration of the prior action. Although Petitioner argues that there was a

1 See 7 FCC Rcd 4917 (1992).

typographical error in the Petition for Rule Making, the correct coordinates are not consistent with the Commission's spacing requirements. Specifically, the correct coordinates are still short-spaced to the application site for Channel 294A, Williamstown, Kentucky. As Petitioner states, generally conflicting timely-filed applications are considered as counterproposals in rulemaking proceedings. Here, the petition does not warrant reconsideration because it is impossible to resolve the discrepancy in the reference coordinates on the basis of the filings. The "petition for rule making," the most essential component in a filing to amend the FM Table of Allotments, incorrectly lists the coordinates *three* times. The "correct" coordinates are listed only once in an engineering exhibit to the petition. This case highlights the critical importance of consistently listing correct coordinates in petitions and counterproposals. In view of the above, we find no public interest reason to reinstate the Petition for Rule Making in this proceeding. Accordingly, we deny the Petitioner's Petition for Reconsideration.

6. The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *See* 5 U.S.C. 801(a)(1)(A), because the aforementioned Petition for Consideration was denied.

7. IT IS FURTHER ORDERED That the Petition for Reconsideration filed by the Augusta/Bracken Broadcasting, IS DENIED.

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

9. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
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