

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-111
FM Broadcast Stations.)	RM-11200
(Cumberland Head, New York))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 31, 2006

Released: September 5, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rulemaking* issued in response to a Petition for Rule Making filed by Dana J. Puopolo (“Puopolo”).¹ The *Notice* proposes the allotment of Channel 264A at Cumberland Head, New York, as a first local FM service. The *Notice* states that the proposed allotment would be short-spaced to Canadian Station CBF-FM, Channel 264C1, Montreal, Canada, and therefore Canadian concurrence would be sought for a specially-negotiated short-spaced allotment.

2. **Comments.** Puopolo filed comments supporting the allotment of Channel 264A at Cumberland Head and reaffirmed his intention to apply for the channel if it is allotted and, if authorized, to build and operate a station on that channel. Comments also were submitted by Saranac Lake Radio, LLC (“SLR”). SLR objects to the proposed allotment of Channel 264A at Cumberland Head, arguing that the short-spacing to Station CBF-FM is much more severe than Puopolo had shown, that interference will be caused to Canadian stations inside Canada in violation of our bi-lateral treaty obligations, and that interference to a Cumberland Head station would damage critical service to the station’s own community of license. SLR further states that even if the proposal is not dismissed on technical grounds, Puopolo’s commitment to apply for and construct a station should be deemed suspect because he could not possibly have the financial resources to acquire permits for and construct stations on all the channels for which he has petitioned.

3. **Discussion.** The proposed allotment of Channel 264A at Cumberland Head meets the spacing requirements for domestic FM facilities, but it is short-spaced to Canadian Station CBF-FM. In such situations, it is our general practice to propose the allotment subject to terms specially negotiated between the Canadian and U.S. governments.² If the interfering contour overlap occurs over the United States, the

¹ *Mojave and Trona, California, Stringtown and Haileyville, Oklahoma, and Cumberland Head, New York*, Notice of Proposed Rule Making, 20 FCC Rcd 5999 (MB 2005) (“*Notice*”).

² Such negotiation is authorized under Section 3.5 of the *Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels 201 – 300 Under the Canadian-U.S. FM Broadcasting Agreement of 1947* (adopted (continued....))

proposed allotment meets the guidelines usually applied in negotiating short-spaced allotments.³ If the overlap occurs in Canada, the Commission still can seek the concurrence of the Canadian government with the understanding that the ultimate licensee will accept technical limitations to protect the Canadian station's contour. In the *Notice*, we therefore stated that concurrence in a specially negotiated short-spaced allotment by the Government of Canada would be required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

4. The facts presented in this case are unusual: Further engineering review reveals that, while it would be possible to impose technical limitations on the station to prevent impermissible interference to Canadian Station CBF-FM within the borders of Canada, such limitations would render the station incapable of overcoming destructive interference from Station CBF-FM over the entire community of Cumberland Head. There is, therefore, no possibility that an FM station utilizing Channel 264A at Cumberland Head would be able to provide useable service to that community. Under these circumstances, we do not believe that it would serve the public interest to allot Channel 264A at Cumberland Head, and we shall dismiss Puopolo's petition for rule making.⁴

5. Accordingly, IT IS ORDERED, That the petition for rule making filed by Dana J. Puopolo, proposing the allotment of Channel 264A at Cumberland Head, New York, IS DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Report and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.

8. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

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September 7, 1984). *See Corinth, Hadley, and Queensbury, New York*, Memorandum Opinion and Order, 5 FCC Rcd 3243 (1990).

³ See, e.g., *Van Wert and Richwood, Ohio*, Report and Order, 9 FCC Rcd 7947 (MMB 1994).

⁴ SLR's argument questioning Puopolo's financial ability to apply for and build an FM station at Cumberland Head is therefore moot; moreover, we do not typically address such issues at the allotment stage. *See, e.g., Morristown, New York*, Report and Order, 5 FCC Rcd 6976 (MMB 1990).