

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-379
Table of Allotments,) RM-11086
FM Broadcast Stations.)
(Eatonton and Lexington, Georgia))

**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 a *Notice of Proposed Rule Making* “(Notice”)¹ issued in response to a petition for rule making and supplement filed by Middle Georgia Communications, Inc.² (“Petitioner”), licensee of Station WMGZ(FM), Eatonton, Georgia, proposing the substitution of Channel 249C2 for Channel 249C3 at Eatonton, the reallocation of Channel 249C2 from Eatonton to Lexington, Georgia, and the modification of Station WMGZ(FM)’s license accordingly. Petitioner filed comments and supplement in support of the proposal reaffirming its intention to apply for the channel, if reallocated. Georgia-Carolina Radiocasting, LLC (“Georgia-Carolina”) also filed comments. Reply comments were filed by Petitioner and Georgia-Carolina. After the record closed, Petitioner filed a response to Georgia-Carolina’s reply comments, accompanied by a motion for leave to accept, and a statement for the record.

2. **Background.** The petition was filed pursuant to Section 1.420(i) of the Commission’s Rules which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ In support of its proposal, Petitioner states that Lexington is an incorporated community with a 2000 U. S. Census population of 239 persons. It is the county seat of Oglethorpe County (population 12,635). The city is governed by a mayor and five-person council. Lexington has its own post office and zip code (30648). Lexington provides city services, which include city water, city trash pickup, and fire

¹ *Eatonton and Lexington, Georgia*, Notice of Proposed Rule Making, 19 FCC Rcd 18738 (MB 2004).

² The license of Station WMGZ(FM), pursuant to File No. BALH-20050523AEO, was assigned to Southern Stone Broadcasting, Inc., on July 6, 2005, and consummated on October 31, 2005.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), recon. granted in part, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“Change of Community”).

protection. There are also courthouse offices, a city hall, and sheriff's offices. Lexington is home to offices of the Board of Commissioners, Magistrate Judge, Tax Commissioner, Health Department, and Department of Family and Children Services.

3. In its opposing comments, Georgia-Carolina claims that the proposal would not provide a city-grade contour over Lexington at the proposed tower location. Because it is approximately 2.9 kilometers south of the sole runway at the Washington-Wilkes Airport, Georgia-Carolina alleges that any tower built at the specified location would be limited in height to no more than 123.77 meters AGL and would fail to provide a minimal city-grade contour over any portion of Lexington. Moreover, Georgia-Carolina argues that the proposal would not result in a preferential arrangement of allotments because the reallocation would leave Eatonton with a daytime-only AM service that has been silent without Commission approval in the recent past. Moreover, Georgia-Carolina claims that Petitioner failed to provide the gain and loss data required when a station changes its transmitter site.

4. In its reply comments, Petitioner argues that Georgia-Carolina's allegation that AM Station WKVQ has been repeatedly silent without Commission approval in the recent past is "blatantly false." Petitioner submits a declaration from the licensee of Station WKVQ declaring that in the rare instances the station has been off the air, it has been for only one or two days, a time period not requiring either notification to FCC or permission from FCC to remain silent. With regard to the proposed transmitter site being too close to the Washington-Wilkes Airport, Petitioner contends that upon circularization to aviation interests, FAA often approves towers which exceed various initial criteria. However, to avoid further controversy, Petitioner proposes an alternate site (33-51-00 NL and 82-46-38 WL), which is not near the airport but from which the proposed allotment could provide city-grade coverage to the entire community of Lexington.⁴ Finally, in regard to the allegation that the gain and loss data was untimely filed, Petitioner avers that two supplements, with the petition and with its comments, were timely filed providing gain and loss area data.

5. In its reply comments, Georgia-Carolina acknowledges that Petitioner filed a supplement to its petition for rule making giving gain and loss data, but argues that Petitioner was deficient because it failed to disclose or analyze whether any of the loss area containing 6,394 persons was underserved. Moreover, Georgia-Carolina objects to Petitioner's untimely "amendment" to its proposal suggesting an alternate site that would alleviate the need for FAA approval, and to the removal of the sole full-time service at Eatonton (population 6,764) to the smaller community of Lexington.

6. **Discussion.** As an initial matter, we find that both of Petitioner's supplements providing gain and loss area data were timely filed. In considering a reallocation proposal, we compare the existing allotment to the proposed arrangement of allotments under the FM allotment priorities.⁵ The reallocation of Channel 2449C2 from Eatonton to Lexington, Georgia, would provide the community with its first local aural transmission service, without depriving Eatonton of its sole local service, triggering priority (3).⁶ On

⁴ Petitioner asserts, where, as here, a proponent's transmitter site is challenged, the Commission has allowed the proponent to specify an alternate site, citing *Crisfield, Maryland*, Memorandum Opinion and Order, 9 FCC Rcd 14,612 (MB 2004).

⁵ The FM allotment priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3). See 90 FCC 2d at 91.

⁶ Station KWVQ(AM) would remain licensed to Eatonton.

the other hand, the retention of Channel 249C2 at Eatonton would provide the community with its second local service, triggering priority (4), without any service gains. Although Georgia-Carolina argues that leaving a daytime-only AM service in Eatonton is not a preferential arrangement of allotments, the Commission has held that because of the greater weight that priority (3) has over priority (4), we have granted change of community proposals where a first local transmission service will occur at the new community of license and a daytime-only AM service will remain at the original community.⁷

7. In regard to Georgia-Carolina's claim that Petitioner's proposed site would not provide city-grade contour coverage or meet FAA approval, Petitioner has proposed a new transmitter site. We find that the alternate site complies with the Commission's technical rules including the requisite city grade coverage of the new community of license. Therefore, we are substituting Channel 249C2 for Channel 249C3 at Lexington, as originally requested by Petitioner, but based on the new site.

8. Moreover, the reallocation of Channel 249C2 to Lexington would result in a gain of new service to an area of 7,780 square kilometers containing 137,974 persons. The total coverage (including an overlap area with Eatonton) will encompass an area of 8,560 square kilometers containing 148,588 persons, a net gain of 49,950 persons. We note that it would also result in a loss of service to an area of approximately 4,018 square kilometers containing 88,024 persons. However, the loss area will continue to receive five or more reception services and thus be well served.

9. We believe the public interest would be served by reallocating Channel 249C2 to Lexington, Georgia, as the community's first local aural transmission service, without depriving Eatonton of its sole local aural transmission service. An engineering analysis has determined that Channel 249C2 can be related to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 31.1 kilometers (19.3 miles) east to avoid a short-spacing to the licensed site of Station WSRV (FM), Channel 246C, Gainesville, Georgia. The reference coordinates for Channel 249C2 at Lexington are 33-51-00 North Latitude and 82-46-38 West Longitude. We also modify Station WMGZ(FM)'s license to specify operation on Channel 249C2 at Lexington, Georgia, as its new community license.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 20, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Eatonton, Georgia	--
Lexington, Georgia	249C2

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Southern Stone Broadcasting, Inc., for Station WMGZ(FM), IS MODIFIED to specify operation on Channel 249C2 at Lexington, Georgia, subject to the following conditions:

⁷ See, e.g., *Ravenswood and Elizabeth West Virginia*, Report and Order, 10 FCC Rcd 3181 (1995); *Headland, Alabama and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 1052, 10355 (1995).

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Southern Stone Broadcasting, Inc., licensee of Station WMGZ(FM), is required to submit a rule making fee in addition to the fee required for the application to affect the upgrade and the change in community of license.

13. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

Southern Stone Broadcasting, Inc.
1010 Tower Place
Bogart, Georgia 30622
(Licensee of Station WMGZ(FM))

14. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(1)(A).

15. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

16. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau