

**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.
(Dulac, Louisiana)

MB Docket No. 09-18
RM-11513

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 30, 2009

Released: August 3, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*¹ issued at the request of Sunburst Media-Louisiana, LLC (“Petitioner”), the licensee of Station KMYO-FM, Channel 244C3, Morgan City, Louisiana; (2) a Motion for Leave to File Late Comments filed by the Petitioner; and (3) Comments filed by the Petitioner. No other comments were received. For the reasons discussed below, we will grant the rulemaking petition.

2. **Background.** In response to the Petitioner’s rulemaking petition, the *NPRM* proposed the substitution of FM Channel 230A for vacant Channel 242A at Dulac, Louisiana. This proposed channel change was filed as part of a hybrid application and rulemaking proposal involving the Petitioner’s concurrently filed minor change application.² In this application, the Petitioner proposes the substitution of Channel 244C2 for Channel 244C3 at Morgan City, the reallocation of Channel 244C2 to Gray, Louisiana, and the associated modification of its license for Station KMYO-FM, pursuant to the provisions of Section 73.3573(g) of the Commission’s Rules.³ The modification of the Morgan City license is contingent upon the requested channel substitution at Dulac.

3. The *NPRM* noted that Channel 230A could be substituted for vacant Channel 242A at Dulac with a change of reference coordinates to accommodate the above referenced application. Although the Petitioner’s rulemaking petition claimed that this proposed channel substitution would result in a net gain of service, a staff engineering analysis revealed that the rulemaking proposal would create a net loss of 14,576 persons. The *NPRM* requested that the Petitioner address this discrepancy and the impact of a net loss in service on the overall public interest benefits of its hybrid application-rulemaking proposal.

4. The Petitioner filed its Comments on April 27, 2009, which was after the April 20, 2009, comment deadline set forth in the *NPRM*. In its Motion for Leave to File Late Comments, the Petitioner requests acceptance of its pleading because there would be no adverse impact on any other proposal. In

¹ *Dulac, Louisiana*, Notice of Proposed Rule Making, 24 FCC Rcd 2731 (MB 2009) (“*NPRM*”).

² See File No. BPH-20090129AMR.

³ 47 C.F.R. § 73.3573(g).

its Comments, the Petitioner states that its consulting engineering has recalculated the loss area and has determined that the proposed change in the reference coordinates needed for the channel change at Dulac would create a net loss in service to 12,860 persons. However, the Petitioner contends that the loss area and population created by the change to the Dulac allotment should not be evaluated separately from the hybrid application. The Petitioner states that its proposed upgrade and reallocation of Station KMYO-FM will provide a first local service at Gray (population 4,958) and a net gain in reception service to 43,971 persons. Thus, when evaluated together, the Petitioner contends that the change of the Dulac vacant allotment and the KMYO-FM change in community of license will result in the provision of a first local service under Priority 3 of the FM Allotment Priorities⁴ and an overall net gain in reception service to 31,111 persons. As a result, the Petitioner contends that its proposal will provide a preferential arrangement of allotments.

5. **Discussion.** As a threshold matter, we note that the Commission's Rules do not contemplate the acceptance of comments filed beyond the comment deadline.⁵ However, late filed comments have been accepted and considered where there would be no adverse impact on any other proposal.⁶ Because no other party filed comments or would be prejudiced by acceptance of the Petitioner's Comments, we will grant its motion and consider its pleading.

6. As to the merits, we recognize that, generally, the issue of gains and losses of area and population have not been raised regarding same class channel substitutions of vacant FM allotments. The *NPRM*, however, solicited comment on this issue because of the discrepancy between the gain and loss figures in the Petitioner's rulemaking petition and the staff's engineering analysis. Using either the Petitioner's or the staff's figures, we find that the net loss is acceptable because it is outweighed by the overall public interest benefits of the hybrid application-rulemaking proposal.⁷ Specifically, the entire proposal will trigger FM allotment Priority 3 by providing a first local service to a community with a population of 4,958 persons, as well as a net gain of service to 31,111 persons. By way of contrast, retaining Station KMYO-FM at Morgan City and not substituting channels at Dulac would invoke lesser Priority 4 because it would maintain a second service at Morgan City. Further, most of the loss area caused by the move of the Dulac allotment is well served with five or more existing services, except for a small area of 1.9 sq. km., which is unpopulated. Therefore, we will substitute Channel 230A for vacant FM Channel 242A at Dulac.⁸ This action will permit the grant of the Petitioner's application.⁹

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, IT IS ORDERED, That effective September 17,

⁴ 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 *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁵ 47 C.F.R. § 1.415(d).

⁶ See, e.g., *Willows, California*, Report and Order, 11 FCC Rcd 9180 n.3 (MMB 1996); *Bagdad and Chino Valley, Arizona*, Report and Order, 11 FCC Rcd 14459 (MMB 1996); and *Weaverville, California*, Report and Order, 12 FCC Rcd 2965 (MMB 1997).

⁷ See, e.g., *Corinth, Scotia, and Hudson Falls, New York*, Report and Order, 16 FCC Rcd 13305 (MMB 2001) (taking into account the totality of service improvements resulting from a proposed change of community proposal when determining whether an allotment proposal should be approved); and *Shorter, Orrville, Selma, and Birmingham, Alabama*, Memorandum Opinion and Order, 21 FCC Rcd 373 (MMB 2006) (approving change of community of an FM station with a net loss of service to 43,374 persons because of the overall public interest benefits of the proposal).

⁸ The reference coordinates for Channel 230A at Dulac are 29-20-37 NL and 90-45-16 WL.

⁹ The Petitioner's application, File No. BPH-20090129AMR, is being granted simultaneously with the release of this Report and Order.

2009, the FM Table of Allotments, 47 C.F.R. Section 73.202(b) is AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Dulac, Louisiana	230A

8. IT IS ORDERED, That the rulemaking petition (RM-11513) filed by Sunburst Media-Louisiana, LLC, IS GRANTED.

9. A copy of this *Report and Order* will be sent to Mark N. Lipp, Esq. and Scott Woodworth, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006 (Counsel for Sunburst Media-Louisiana, LLC).

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

11. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau