

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.
(Enfield, New Hampshire; Hartford and White
River Junction, Vermont; and Keeseville and
Morrisonville, New York)
MB Docket No. 05-162
RM-11227
RM-11284

ORDER ON RECONSIDERATION
(Proceeding Terminated)

Adopted: December 15, 2014

Released: December 16, 2014

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Audio Division, Media Bureau ("Bureau"), pursuant to delegated authority, has before it a timely-filed Petition for Reconsideration and Clarification ("Petition") filed by Roy E. Henderson ("Henderson"). The Petition seeks reconsideration and clarification of the Commission's Memorandum Opinion and Order in the proceeding, specifically that portion of the Commission's decision that modified the FM allotment processing policies. The Petition does not present evidence of material error or omission of fact or law, or other facts or circumstances that would warrant the Commission's review of its Vacant Allotment Order. Accordingly, we dismiss the Petition.

II. BACKGROUND

2. Vacant Allotment Order. The Commission adopted the Vacant Allotment Order upon its review of a Bureau decision granting a proposal to, inter alia, reallocate FM Channel 231A from Keeseville to Morrisonville, New York, as a first local service. The Commission granted the application for review to the extent of rescinding that reallocation, finding that the Bureau's action was inconsistent with existing Commission case law, "which states that the Commission will not remove a vacant FM or TV allotment

1 "Petition for Reconsideration and Clarification," filed by Roy E. Henderson (Feb. 23, 2011).

2 Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York, Memorandum Opinion and Order, 26 FCC Rcd 798 (2011) ("Vacant Allotment Order"). Notice of the decision was published in the Federal Register on February 17, 2011. See 76 Fed.Reg. 9249 (Feb. 17, 2011).

3 The applicant for review was Hall Communications, Inc., a counterproponent in this FM allotment rulemaking. Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York, Report and Order, 21 FCC Rcd 5136 (MB 2006).

from a community if a potential applicant has expressed an interest in applying to build a station on that channel, absent a compelling reason to do so.”<sup>4</sup>

3. The Commission stated that the current active interest in the entire inventory of vacant FM allotments warrants an adjustment in FM allotment processing policies. The Commission therefore will no longer accept proposals to delete a vacant allotment, to move a vacant allotment to a different community, or to down-grade the class of a vacant allotment. The Commission noted, however, that it will continue to “permit parties to propose same-class channel substitutions for vacant allotments in order to accommodate proposals in technically related FM allotment and/or application filings.”<sup>5</sup> The Commission explained that same-class channel substitutions do not change the Section 307(b) determinations underlying the initial allotment decision.

4. **Henderson Petition for Reconsideration.** Henderson was not previously a party to this proceeding, but states that, as a Commission licensee holding FM radio licenses, his interests stand to be affected by the modification of FM processing policies in the manner specified in the *Vacant Allotment Order*. Henderson requests clarification of whether that decision prohibits requests for changes in the reference coordinates of vacant allotments. He states that the decision does not specifically address proposed changes in vacant allotment reference coordinates, and that therefore it is unclear whether such requests will be prohibited.

### III. DISCUSSION

5. Section 1.429 of the Rules permits interested persons to petition for reconsideration of final orders in rulemaking proceedings.<sup>6</sup> Reconsideration is warranted only if the petitioner cites an error of fact or law, or presents facts or circumstances that otherwise warrant Commission review of its prior action.<sup>7</sup> In 2011, in order “to allow the agency to resolve certain petitions for reconsideration more efficiently and expeditiously,” the Commission amended its rules to delegate authority to the relevant bureau or office to dismiss or deny a petition for reconsideration of a Commission-level rulemaking or adjudicatory order if the petition “plainly does not warrant consideration by the full Commission.”<sup>8</sup>

6. We find that a clarification is unnecessary. The *Vacant Allotment Order* states that proposals will no longer be accepted which involve “the reallocation, class down-grade or deletion of a vacant FM allotment.”<sup>9</sup> As a result, applicants and rulemaking petitions may continue to request changes in vacant allotment reference coordinates. Moreover, subsequent to the issuance of the *Vacant Allotment*

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<sup>4</sup> *Vacant Allotment Order*, 26 FCC Rcd at 799 (citations omitted).

<sup>5</sup> *Id.*, 26 FCC Rcd at 801, ¶ 10.

<sup>6</sup> 47 C.F.R. § 1.429.

<sup>7</sup> See *Eagle Broadcasting Co. v FCC*, 514 F.2d 852 (D.C. Cir. 1975).

<sup>8</sup> *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, ¶¶ 27-28 (2011); see also 47 C.F.R. §§ 1.429(l) (codifying delegation in rulemaking cases) and 1.106(p) (codifying same delegation in non-rulemaking cases).

<sup>9</sup> *Vacant Allotment Order*, 26 FCC Rcd at 801, ¶ 10.

*Order*, the Bureau has processed requests for same-class channel substitutions and changes in reference coordinates for vacant FM allotments.<sup>10</sup>

#### IV. ORDERING CLAUSE

7. ACCORDINGLY, IT IS ORDERED that, pursuant to authority contained in Section 1.429(l) of the Commission's Rules,<sup>11</sup> the Petition for Reconsideration and Clarification filed on February 23, 2011, by Roy E. Henderson, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>10</sup> See, e.g., *Dermott, Arkansas, and Cleveland, Mississippi*, Report and Order, 28 FCC Rcd 5664 (MB 2013) (granting request for same class channel substitutions and different reference coordinates for vacant allotments at Dermott, Arkansas, and Cleveland, Mississippi); and *Asbury, Iowa*, Report and Order, 27 FCC Rcd 11054 (MB 2012) (granting request for same class channel substitution and different reference coordinates for vacant allotment at Asbury, Iowa).

<sup>11</sup> 47 C.F.R. §1.429(l).