

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

MM Docket No. 88-608

In the Matter of

Amendment of Section 73.202(b),	RM-6497
Table of Allotments,	RM-6756
FM Broadcast Stations.	RM-6757
(Arcadia, Goulds, Immokalee,	RM-6758
LaBelle, North Naples,	RM-6759
Palmdale, and Venus, Florida) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 3, 1990;

Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Hispanic American Radio Broadcasting Corporation ("Hispanic"), licensee of Station WTHM(FM),² Channel 252A, Goulds, Florida, the Commission considers herein the *Notice of Proposed Rule Making and Orders to Show Cause*, 4 FCC Rcd 1234 (1989), proposing the substitution of Channel 252C for Channel 252A at Goulds, and modification of its license to specify operation on the higher powered channel. The *Notice* also proposed the substitution of Channel 221A for Channel 252A at Immokalee, Florida, with the modification of Station WCOO(FM)'s license, and the substitution of Channel 223A for Channel 221A at LaBelle, Florida, with the modification of Station WKZY(FM)'s license in order to accomplish the upgrade at Goulds.

2. In response to the *Notice*, Dakos Broadcasting, Inc. ("Dakos"), licensee of Station WOKD(FM), Channel 252A, Arcadia, Florida, filed a counterproposal requesting substitution of Channel 252C1 for Channel 252A at Goulds, and the substitution of Channel 252C1 for Channel 252A at Arcadia, Florida (RM-6756). Okaloacoochee Communications ("OK") filed a counterproposal and comments seeking allotment of Channel 222A to North Naples, Florida (RM-6757). KBC Communications ("KBC") filed a counterproposal requesting the allotment of Channel 223A to Palmdale, Florida (RM-6758). Lake Placid Broadcast Group ("Lake Placid") filed a counterproposal requesting allotment of Channel 223A to Venus, Florida (RM-6759).³ Naples Radio, Inc. ("NRI"), licensee of Station WCOO(FM), Channel 252A, Immokalee, Florida, filed comments.

3. Thereafter, on July 28, 1989, Lake Placid withdrew its counterproposal. In addition, on August 11, 1989, KBC and OK withdrew their counterproposals. Therefore, we will dismiss their counterproposals and all comments responsive thereto will not be discussed. NRI and Omega Broadcasting Corporation ("Omega"), licensee of Station WKZY(FM), Channel 221A, LaBelle, Florida, filed comments on KBC and OK's counterproposals. On August 11, 1989, NRI and Omega withdrew their opposing com-

ments. Hispanic filed supporting comments restating its intention to apply for Channel 252C at Gould, if allotted, and to reimburse NRI and Omega for the reasonable costs incurred with their channel changes at Immokalee and LaBelle, respectively. Dakos and Hispanic filed reply comments. Hispanic and Gulf Dunes Broadcasting, Inc. ("Gulf Dunes"), the successor in interest to Dakos, filed late supplemental comments.⁴ Manna Christian Missions, Inc. ("Manna"), applicant for Channel 220A at Bonita Springs, Florida, filed comments in response to the counterproposals and a supplement to those comments.⁵ Cross Country Broadcasting, Inc. ("Cross Country"), permittee of noncommercial educational FM Station WBPT, Channel *208, Naples, Florida (BPED-84091912), filed comments.

4. In its counterproposal, Dakos requests the substitution of Channel 252C1 for Channel 252A at Goulds, and the substitution of Channel 252C1 for Channel 252A at Arcadia. Dakos contends that, if Hispanic would increase to a C1 facility, it would be possible for Station WOKD(FM) at Arcadia to upgrade to a C1 facility also on Channel 252, whereas, if Hispanic were allowed to operate as a full Class C facility, Dakos could not operate even as a Class C2 facility from any site consistent with the Commission's spacing requirements. Dakos also states that, if its proposal is granted, it will reimburse the licensees of Stations WCOO(FM) at Immokalee and WKZY(FM) at LaBelle for the reasonable expenses which they incur in making the channel changes.

5. Hispanic, in response to Dakos' counterproposal, states that Dakos' proposal would not provide a first or second service to any areas not now served, and would not provide any new first local service. Hispanic claims that the allotment of Channel 252C at Goulds would provide an important benefit by the provision of first and second service to an area of the State of Florida which is now underserved. Hispanic states that its proposal meets the objectives of the first two of the allotment criteria of *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982), and should be preferred over Dakos' counterproposal.

6. In its supplemental comments, Gulf Dunes, successor to Dakos, suggests the substitution of Channel 252C3 for Channel 252A at Arcadia, Florida, and modification of the license for Station WOKD(FM) to specify Channel 252C3. Gulf Dunes states that it will file an application to move the site of Station WOKD(FM) to a location that satisfies the Commission's spacing requirements for Class C3 facilities. In addition, Gulf Dunes states that it will withdraw its interest in its proposal to substitute 252C1 at Arcadia, Florida. Hispanic states that it supports Gulf Dunes' proposal to substitute Channel 252C3 for Channel 252A at Arcadia.

7. An engineering analysis confirms that Channel 252C3 can be substituted for Channel 252A at Arcadia, Florida, with a site restriction of 20.6 kilometers (12.8 miles) northwest to avoid a short-spacing to the construction permit for Station WRWX(FM), Channel 253A, Sanibel, Florida.⁶ As stated in the *Notice*, Channel 252C can be substituted for Channel 252A at Goulds in compliance with the Commission's minimum distance separation requirements at its present transmitter site. Channel 221A can be substituted for Channel 252A at Immokalee in compliance with the Commission's minimum distance separation requirements at Station WCOO(FM)'s licensed transmitter site. Channel 223A can be substituted for

Channel 221A at LaBelle in compliance with the Commission's minimum distance separation requirements at Station WKZY(FM)'s licensed transmitter site.⁷

8. Hispanic and Dakos/Gulf Dunes filed comments stating their willingness to reimburse the licensees of Stations WCOO(FM) and WKZY(FM) for all reasonable and necessary expenses incurred with the change in channels. See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

9. In view of the above information, we believe that the public interest would be served by granting the requests of Hispanic and Dakos/Gulf Dunes to allot upgraded Channel 252C to Goulds, and Channel 252C3 to Arcadia. In accordance with Section 1.420(g) of the Commission's Rules, we will substitute Channel 252C3 for Channel 252A at Arcadia, and modify the license of Station WOKD(FM). In addition, we will also substitute Channel 252C for Channel 252A at Goulds, Florida, and modify the license of Station WRTO(FM). In order to accommodate the Goulds modification, we will substitute Channel 221A for Channel 252A at Immokalee, Florida, and modify the license for Station WCOO(FM). We will also substitute Channel 223A for Channel 221A at LaBelle, Florida, and modify the license for Station WKZY(FM).

10. Accordingly, pursuant to the authority found 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 August 30, 1990, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Arcadia, Florida	252C3
Goulds, Florida	252C
Immokalee, Florida	221A
LaBelle, Florida	223A

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WOKD(FM), Arcadia, Florida, IS MODIFIED, to specify operation on Channel 252C3 in lieu of Channel 252A, subject to the following conditions:

(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; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WRTO(FM), Goulds, Florida, IS MODIFIED, to specify operation on Channel 252C in lieu of Channel 252A, subject to the following conditions:

(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; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WCOO(FM), Immokalee, Florida, IS MODIFIED, to specify operation on Channel 221A in lieu of Channel 252A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license (BLH-841018CB) except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (BLH-841018CB) except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKZY(FM), LaBelle, Florida, IS MODIFIED, to specify operation on Channel 223A in lieu of Channel 221A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license (BLH-781206AJ) except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (BLH-781206AJ) except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

15. IT IS FURTHER ORDERED, That the Secretary SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Report and Order* to the licensees of Stations WKZY, WCOO, and WOKD, as follows:

Omega Broadcasting
Corporation
Station WKZY
3538 Albemarle Street, N.W.
Washington, D.C. 20008

Erwin G. Krasnow
Verner, Liipfert,
Bernhard,
McPherson and Hand
901 15th Street, N.W.
Washington, D.C. 20005-2301
(Attorney for Gulf Dunes
Broadcasting, Inc.)

Naples Radio, Inc.
Station WCOO
810 12th Avenue South
Naples, Florida 33940

16. IT IS FURTHER ORDERED, That the counterproposals of KBC Communications (RM-6758) requesting the allotment of Channel 223A to Palmdale, Florida, Okaloacoochee Communications (RM-6757) requesting the allotment of Channel 222A to North Naples, Florida, and Lake Placid Broadcasting Group (RM-6759) requesting the allotment of Channel 223A to Venus, Florida, ARE DISMISSED.

17. IT IS FURTHER ORDERED, That this proceeding is TERMINATED.

18. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

¹ The communities of Arcadia, North Naples, Palmdale, and Venus, Florida, have been added to the caption.

² Station WTHM's call sign was changed to Station WRTO.

³ Public Notice of the Dakos, KBC, Lake Placid, and OK counterproposals was given on May 12, 1989, Report No. 1780.

⁴ These pleadings aid in the expeditious resolution of this proceeding by resolving all outstanding issues. Therefore, we have accepted the late filed pleadings.

⁵ On June 1, 1990, Manna withdrew its application for a new noncommercial educational FM station at Bonita Springs, Florida (BPED-881229MK). In light of the withdrawal of Manna's application, the pleadings filed by Hispanic and Manna's responses thereto need not be considered.

⁶ The coordinates for Channel 252C3 at Arcadia are North Latitude 27-20-07 and West Longitude 82-01-18.

⁷ The coordinates for Channel 252C at Goulds are North Latitude 25-32-24 and West Longitude 80-28-07. The coordinates for Channel 221A at Immokalee are North Latitude 26-21-19 and West Longitude 81-21-03. The coordinates for Channel 223A at LaBelle are North Latitude 26-48-46 and West Longitude 81-21-16.