

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.)
(Mt. Juliet and Belle Meade,)
Tennessee))

MM Docket No. 97-97
RM-9047

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 16, 1997

Released: July 25, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making in this proceeding, 12 FCC Rcd 3201 (1997). Mt. Juliet Broadcasting, Inc. ("MJB"), Great Southern Broadcasting, Inc. ("Great Southern"), and David J. Waynick filed comments. MJB filed reply comments. For the reasons discussed below, we are reallocating Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and are modifying the construction permit of Station WNPL, Channel 294A, Mt. Juliet to specify Belle Meade as the community of license.

Background

2. At the request of MJB, permittee of Station WNPL, Channel 294A, Mt. Juliet, the Notice proposed the reallocation of Channel 294A from Mt. Juliet to Belle Meade, Tennessee. This request was filed pursuant to Section 1.420(i) of the Commission's Rules. Section 1.420(i) permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989); recon granted in part, 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).¹ In making

¹The FM allotment priorities are as follows: 1) First full-time aural service; 2) Second full-time aural service; 3) First local service; and 4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

the evaluation, we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

3. In its Petition for Rule Making, MJB stated that it had been unable to implement operation on its authorized Station WNPL facility because of electromagnetic interference (EMI) to FAA air navigation facilities.² MJB also included an engineering exhibit stating that due to the proximity of the Nashville International and Smyrna Airports, there is no site available from which a Channel 294A allotment could provide the requisite 70 dBu coverage to Mt. Juliet without predicted interference to FAA navigational systems. MJB also stated that there are no alternative channels for Mt. Juliet. In order to implement an operation on Channel 294A, MJB proposed the reallocation to Belle Meade, Tennessee. According to MJB, this will result in a first local service to a community of 2,839 persons and a net gain of service to 23,946 persons. MJB also notes that Belle Meade has its own police force, Methodist church, newspaper, city manager, and approximately six dozen businesses.

4. The Notice made two initial observations concerning the reallocation proposal. First, we normally would not be able to find that a removal of a sole local service from Mt. Juliet, a community of 5,389 persons, to the smaller community of Belle Meade would be a preferential arrangement of allotments as required by Community of License. We also noted that Belle Meade is within the Nashville Urbanized Area and the proposed reallocated channel will provide a 70 dBu signal to the entire Urbanized Area. In this connection, we stated that we will not uncritically apply a first local service preference of FM Priorities when a party seeks to reallocate its channel to a suburban community of an Urbanized Area. To this end, we requested specific comment regarding the extent to which the station will provide service to the entire Nashville Urbanized Area, the relative populations of Belle Meade and Nashville, and the interdependence of Belle Meade to the Nashville Urbanized Area. In regard to both observations, we specifically stated that even if we were to find that a reallocation to Belle Meade would not be a preferential arrangement of allotments or entitled to a preference as a first local service, neither finding would preclude a determination that a Belle Meade allotment would be preferable to a technically defective allotment at Mt. Juliet.

5. In response to the Notice, we received comments from MJB, David J. Waynick, and Great Southern. David J. Waynick, mayor of Mt. Juliet, filed comments supporting the retention of Channel 294A in Mt. Juliet. Great Southern, licensee of Station WAMB-FM, Donelson, Tennessee, filed comments in opposition to the proposed reallocation. In addition to arguing that the proposed reallocation would not result in a preferential arrangement of allotments and that Belle Meade is not entitled to a preference as a first local service, Great Southern contends that Channel 294A can provide service to Mt. Juliet without causing EMI interference to FAA navigation facilities. In this regard, Great Southern has submitted an engineering statement from William O. Barry. This statement identifies a specific site in Mt. Juliet from which Station

²As a result of a complaint of interference to air navigation, Station WNPL voluntarily terminated operation on November 7, 1996. MJB has agreed to pay the costs of changing the frequencies of two FAA air navigational devices.

WNPL could operate with the minimum FM effective radiated power of 100 watts at an antenna height of 100 meters and provide the requisite 70 dBu service to all of Mt. Juliet.³ According to Great Southern, such an operation "should not" cause EMI interference to FAA navigational devices. Great Southern also states that the predecessor permittee of Station WNPL (Jamal Broadcasting, L.P.) was aware that a full facility operation on Channel 294A at Mt. Juliet would cause EMI interference. In this situation, Jamal Broadcasting had agreed to accept a grant of the construction permit conditioned upon a power reduction in the event of harmful EMI interference. As such, an operation at 100 watts in Mt. Juliet would be in accordance with the conditional grant of the construction permit and be preferable to an allotment at Belle Meade.

6. MJB reiterates its argument that Channel 294A cannot be implemented in Mt. Juliet because of EMI interference to FAA navigational facilities. In Reply Comments, MJB addresses the engineering statement included with the Great Southern Comments. MJB first notes that William O. Barry is the president of Great Southern and the engineering exhibit was not verified and did not disclose any engineering credentials for Mr. Barry. MJB also disputes the 100-watt solution advanced by Great Southern. In addition to the argument that 100 watts is an inefficient use of the spectrum, MJB contends that local zoning restrictions would not permit a tower 100 meters in height. In support of this statement, MJB includes a letter from a local law firm with previous experience regarding the location of radio towers in middle Tennessee. Based upon its own experience and a conversation with the City Manager of Mt. Juliet, the letter concludes that there are no zoning specifications in existence that would permit the construction of a 100-meter tower and that it is "highly unlikely" that a specific height variance could be obtained within the geographic limits of Mt. Juliet. In a further rebuttal of the Great Southern engineering statement, MJB submits a verified engineering statement prepared by Roy P. Stype, whose previous work is a matter of record before the Commission. According to this engineering exhibit, a 100-watt operation would not eliminate EMI to two Nashville area localizers. This conclusion was based upon the FAA Airspace Analysis Model and identified the two localizers used in air navigation.

7. Based upon the record in this proceeding, we are of the view that a Channel 294A operation cannot be implemented at Mt. Juliet. MJB has specifically identified the four Nashville area FAA localizers that would be adversely affected by a Channel 294A operation in the Mt. Juliet area. After our own engineering review, we concur with the engineering exhibits submitted by MJB stating that there is no area in which a transmitter for Channel 294A at Mt. Juliet could be located which would satisfy the FAA concerns regarding EMI to air navigation and enable Station WNPL to provide the requisite 70 dBu service to Mt. Juliet as required by Section 73.315(a) of the Rules. We have received no public comment which would rebut this determination. As suggested by Great Southern, a minimum power 100-watt facility located within Mt. Juliet could enable Station WNPL to provide a 70 dBu service to all of Mt. Juliet. However, as discussed in paragraph 6, *supra*, such a facility would also cause EMI to specific FAA localizers and would not be consistent with local zoning requirements. In view of the above, we conclude that under these circumstances, a Channel 294A allotment at Belle Meade

³Section 73.211(a) of the Rules permits a Class A FM station to operate at a maximum radiated power of six kilowatts.

would be preferable to the existing Channel 294A allotment at Mt. Juliet.⁴

8. 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 September 8, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Mt. Juliet, Tennessee	-----
Belle Meade, Tennessee	294A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Mt. Juliet Broadcasting, Inc. for Station WNPL, Channel 294A, Mt. Juliet, Tennessee, IS MODIFIED to specify Belle Meade, Tennessee, as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for construction permit (FCC 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 Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

10. Pursuant to Section 1.1104 (1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Mt. Juliet Broadcasting, Inc., permittee of Station WNPL, is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in community of license.

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

12. For further information concerning this proceeding, contact Robert Hayne, Mass

⁴The reference coordinates for the Channel 294A allotment at Belle Meade, Tennessee, are 36-11-08 and 86-45-15.

Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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