

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

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No.97-97 |
| Table of Allotments, |) | RM-9047 |
| FM Broadcast Stations. |) | |
| (Mt. Juliet and Belle Meade, |) | |
| Tennessee) |) | |

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 22, 1997

Released: October 31, 1997

By the Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration filed by The Cromwell Group, Inc. ("Cromwell Group") directed to the Report and Order in this proceeding, FCC Rcd 10481 (1997). Mt. Juliet Broadcasting, Inc. ("MJB") filed an Opposition to Petition for Reconsideration. Cromwell Group filed a Reply to that Opposition. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of MJB, permittee of Station WNPL, Channel 294A, Mt. Juliet, Tennessee, the Report and Order reallocated Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and modified the Station WNPL construction permit to specify Belle Meade as the community of license. That action was premised on the fact that a Channel 294A allotment could not be implemented at Mt. Juliet due to electromagnetic interference (EMI) to FAA air navigation facilities. In this regard, MJB had specifically identified four Nashville area FAA localizers that would be adversely affected by a Channel 294A operation in the Mt. Juliet area. In our own engineering review, we concurred with the engineering exhibits submitted by MJB stating that there is no area in which a transmitter for 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. As such, we concluded that under these circumstances, a Channel 294A allotment at Belle Meade would be preferable to the existing allotment at Mt. Juliet.

3. In its Petition for Reconsideration, Cromwell Group contends that a reallocation of a defective Channel 294A allotment at Belle Meade is inconsistent with "controlling and dispositive authority" in which defective allotments have been deleted. These actions deleting an existing allotment are San Clemente, California, 10 FCC Rcd 8291 (1995); Harkers Island, North Carolina, 10 FCC Rcd 13159 (1995); Atlantic City, New Jersey, 57 RR2d 1436 (1985); and Pinckneyville, Illinois, 41 RR2d 69 (1977). Furthermore, Cromwell Group notes that MJB acquired the Channel 294A construction permit with full knowledge that a Channel 294A operation at Mt. Juliet could create a hazard to air navigation. In this regard, Cromwell Group refers to an April 22, 1991 adverse determination by the FAA and the fact that

MJB would have accepted a modification of its construction permit with the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful immediate corrective action as necessary to eliminate the harmful interference.

As such, Cromwell Group concludes that deletion of this allotment would be both consistent with prior Commission actions and in accordance with MJB's proposed modification of its construction permit.

Discussion

4. We deny the Petition for Reconsideration. We do not believe that it would be in the public interest to first undertake a proceeding looking toward revocation of the Station WNPL construction permit and then undertake a separate proceeding to delete the underlying allotment. Instead, under the circumstances of this case, the preferable course of action is to reallocate Channel 294A to Belle Meade which will lead to a prompt resumption of service by Station WNPL.¹ We will discuss the reasons for this action below.

5. At the outset, our earlier action reallocating Channel 294A to Belle Meade does not conflict with the actions cited by Cromwell Group in which defective allotments were deleted. None of those actions involved an outstanding construction permit. Those actions merely recognized that a construction permit could not be granted for the allotment and, as such, service could never be provided. In those proceedings, deletion of the allotment and the possible institution of service made possible by that deletion was the only means to provide service to the public. In this proceeding, service could be provided on Channel 294A if we modified an outstanding construction permit to specify a new community of license at a new site. We continue to believe that this action will best serve the public interest because it will lead to a predictable and prompt institution of service.

6. This action is also consistent with 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 which the Commission established a procedure for a licensee or permittee to change its community of license and have its authorization modified accordingly. Under Community of License, MJB is entitled to have the Station WNPL community of license changed if the resulting reallocation will result in a preferential arrangement of channels. In this situation, that determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² It continues to be our view that a Channel 294A allotment at Belle Meade is preferable to a defective allotment at Mt. Juliet under Priority 4, infra.

7. Finally, we reject the argument that the reallocation action in this proceeding was inconsistent with a proposed condition on the MJB construction permit. In addition to the public interest benefits discussed above, we also believe that a reallocation of Channel 294A was, in fact, consistent with the proposed condition. Reallocating Channel 294A to a new community and at a new site that would not cause EMI is within the ambit of taking "such immediate corrective action as necessary to eliminate the harmful interference."

¹As a result of a complaint of interference to air navigation, Station WNPL voluntarily terminated operation on November 7, 1996.

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

8. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by The Cromwell Group, Inc. IS DENIED.

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

10. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
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