

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

In the matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 07-125
Table of Allotments,)	RM-11375
FM Broadcast Stations.)	RM-11410
(Oolitic and Worthington, ¹ Indiana))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 15, 2009

Released: April 17, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (the “Notice”)² issued at the request of Bruce Quinn (“Petitioner”), requesting the allotment of Channel 231A at Oolitic, Indiana, as the community’s second local transmission service.³ In response to the Notice, L. Dean Spencer (“Spencer”) filed a counterproposal to allot Channel 231A at Worthington, Indiana, as the community’s first local aural transmission service.⁴ Petitioner filed comments reiterating his interest in the allotment of Channel 231A at Oolitic.

2. In his counterproposal, Spencer states that Worthington (U.S. Census population 1,481 persons) is a community for allotment purposes, and is deserving of a first local aural transmission service. It has its own zip code, two schools, and library, and is not located within an urbanized area. There are no stations licensed at Worthington. We find that Worthington is deserving of an allotment.

3. Oolitic, Indiana, U. S. Census population 1,152 persons, is also a community for allotment purposes. Oolitic has one FM station, noncommercial educational Station WMYJ-FM. The allotment of

¹ The community of Worthington has been added to the caption.

² *Oolitic, Indiana*, Notice of Proposed Rule Making, 22 FCC Rcd 11602 (MB 2007)

³ The Notice was issued in response to Petitioner’s request for reconsideration of our September 29, 2005, letter dismissal of his Petition for Rulemaking, which contained the same proposal as that set forth in the Notice. Our letter dismissal, based upon the proposal’s short-spacing to FM Station WQKC, Channel 229B, Seymour, Indiana, was in error. Although proposed Channel 231A at Oolitic is short-spaced to the formerly licensed site of Station WQKC (now, WLCL), Channel 229B, at Seymour, Indiana, that license had been modified in MB Docket No. 03-98 to specify operation on Channel 230A at Sellersburg, Indiana. *Seymour and Sellersburg, Indiana*, Report and Order, 19 FCC Rcd 15312 (MB 2004). Accordingly, we issued the Notice in this proceeding, and we shall dismiss the Petition for Reconsideration as moot.

⁴ In his counterproposal, Spencer correctly observes that the Notice erred in characterizing the proposed allotment at Oolitic as a proposed first local aural transmission service.

Channel 231A at Oolitic would be the community's second local service, not the first, as incorrectly stated in the *Notice*.⁵

4. Both communities are deserving of an allotment, and there are no equivalent channels available to accommodate both petitioners, so we therefore must compare the two allotments using the FM allotment priorities.⁶ Because the allotment of Channel 231A at Worthington would provide the community with its first local service, that proposal would serve FM allotment priority (3). The allotment of Channel 231A at Oolitic would provide the community with its second local service, thus serving priority (4). Accordingly, the allotment at Worthington is preferred under the Commission's allotment priorities.

5. A staff engineering analysis shows that Channel 231A can be allotted at Worthington at a site 14 kilometers 8.7 miles south of the community at coordinates 39-00-31 NL and 86-55-05 WL.⁷

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A).

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective June 1, 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</u>
Worthington, Indiana	231A

8. A filing window period for Channel 231A for Worthington, Indiana, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

9. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Bruce Quinn to request reconsideration of the letter dismissal of his petition for rulemaking IS DISMISSED AS MOOT.

⁵ See n.4, *supra*.

⁶ The FM allotment priorities are: (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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC Rcd 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR2d 448 (1983).

⁷ Our records indicate that this site is short-spaced to a proposal in MB Docket No. 05-67, *i.e.*, proposed Channel 230B1 at Clinton, Indiana, which is part of a counterproposal (RM-11342) dismissed in that proceeding. See *Fishers, Lawrence, Indianapolis and Clinton, Indiana*, Report and Order 22 FCC Rcd 11660 (MB 2007), Memorandum Opinion and Order, DA 09-440 (rel. Feb. 27, 2009), *see* 74 Fed.Reg. 10686 (March 12, 2009). Although the counterproponent's petition for reconsideration has been denied, the time for requesting further review has not yet expired. The allotment of Channel 231A at Worthington, Indiana, is therefore subject to the final outcome in MB Docket No. 05-67. See *Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003)(contingent rulemaking proposal granted subject to the outcome of earlier allotment proceeding that is effective but not final).

10. IT IS FURTHER ORDERED, That the petition for rule making filed by Bruce Quinn for the allotment of Channel 231A at Oolitic, Indiana, IS DENIED.

11. IT IS FURTHER ORDERED, that the allotment of Channel 231A at Worthington, Indiana, is subject to the final outcome in MB Docket No. 05-67.

12. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

13. For further information concerning a proceeding listed above, contact Deborah A. Dupont, Media Bureau (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

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