

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 89-686
Table of Allotments)	RM-7035
FM Broadcast Stations.)	RM-7320
(Eatonton and Sandy Springs, Georgia;)	
and Anniston and Lineville, Alabama))	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 20, 1997

Released: June 27, 1997

By the Chief, Policy and Rules Division:

1. The Commission has before it an Application for Review filed by Sapphire Broadcasting, Inc. (formerly Emerald Broadcasting of the South, Inc.) directed to the Report and Order in this proceeding. 6 FCC Rcd 6580 (1991). Jacor Broadcasting of Atlanta, Inc., the National Association of Broadcasters, WSB, Inc. and Summit-Atlanta Broadcasting Corporation filed Oppositions to the Application for Review. Sapphire Broadcasting filed a Reply to the Oppositions. For the reasons discussed below, we are dismissing the Application for Review.

Background

2. The Report and Order in this proceeding considered a counterproposal filed by Sapphire Broadcasting, licensee of Station WHMA, Channel 263C, Anniston, Alabama, to substitute Channel 263C1 for Channel 263C, reallocate Channel 263C1 to Sandy Springs, Georgia, and modify the Station WHMA license to specify operation on Channel 263C1 at Sandy Springs.¹ The Report and Order denied the Sapphire Broadcasting counterproposal. That

¹The proposed reallocation from Anniston to Sandy Springs was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules which provides for the reallocation of a channel to a new community and modification of a station license or construction permit to reflect the new community without competition from other interested parties for the allotment. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989); recon, 5 FCC Rcd 7094 (1990). Under Community of License, the proposed reallocation must result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of

decision was premised on the dependence of Sandy Springs on the Atlanta Urbanized Area, the loss of existing service, and the creation of new interference. The Application for Review addressed each of these premises.

3. In considering the proposed Channel 263C1 reallocation to Sandy Springs, we noted that the reallocation was short-spaced to the licensed site of Station WSSL, Channel 263C, Gray Court, South Carolina.² On the date the Sapphire Broadcasting counterproposal was filed, SFX Broadcasting of South Carolina, Inc. ("SFX Broadcasting"), licensee of Station WSSL, filed a one-step application (File No. BPH-900212IB) to downgrade its allotment to Channel 263C1 and relocate its transmitter site.³ That application was granted on November 9, 1990. As a result of the grant of that application, we were able to consider the Sapphire Broadcasting counterproposal for a Channel 263C1 reallocation to Sandy Springs. However, the construction permit authorizing a transmitter site relocation and Channel 263C1 operation for Station WSSL at Gray Court was never implemented. For this reason, the construction permit was cancelled on April 11, 1994. The licensee of Station WSSL did not contest that cancellation.

Milledgeville and Covington, Georgia

4. In a separate pleading, Scotts Trail Radio, Inc., licensee of Station WLRR, Channel 264A, Milledgeville, Georgia, filed a "Motion to Dismiss Application for Review and to Terminate Proceeding." In that Motion, Scotts Trail Radio refers to its Petition for Rule Making proposing the substitution of Channel 264C3 for Channel 264A at Milledgeville, reallocation of Channel 264C3 to Covington, and modification of the Station WLRR license to specify operation on Channel 264C3 at Covington. This reallocation proposal conflicts with the proposed Channel 263C1 reallocation proposal for Sandy Springs. In its Motion, Scotts Trail Radio notes the cancellation of the Station WSSL construction permit. In this regard, Scotts Trail Radio argues that because the Sandy Springs reallocation was contingent upon the Station WSSL transmitter relocation and downgrade, dismissal of the Application for Review is appropriate in view of the abandonment of those actions.

5. In response, Sapphire Broadcasting and WNNX License Investment Company, proposed assignee of Station WHMA, ("Sapphire/WNNX"), filed a "Joint Opposition to Petition

FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The FM allotment priorities are: 1) First full-time aural service; 2) second full-time aural service; 3) First local service; and 4) Other public interest matters.

²Section 73.207(b) of the Commission's Rules requires a separation of 270 kilometers (168 miles) between the co-channel Class C allotment at Gray Court and the proposed Class C1 allotment at Sandy Springs. In this instance, the separation is only 230 kilometers (143 miles).

³The separation requirement between co-channel Class C1 allotments is 245 kilometers (152 miles). The Class C1 construction permit site for Station WSSL is 246.7 kilometers from the proposed Class C1 allotment at Sandy Springs.

for Rule Making." In that Joint Opposition, Sapphire/WNNX acknowledge the cancellation of the Station WSSL construction permit at Gray Court. However, Sapphire/WNNX argue that the licensee of Station WSSL has never retracted its willingness to downgrade its allotment and relocate its transmitter site. According to Sapphire/WNNX, the licensee of Station WSSL "simply got tired" of filing applications to extend the completion date of its construction permit. In this regard, Sapphire/WNNX states that they have contacted the licensee of Station WSSL in an effort to update its willingness to downgrade its allotment and relocate its transmitter site.

6. Sapphire/WNNX also argue that it was not incumbent upon SFX Broadcasting to file an application to express its willingness to downgrade the Station WSSL allotment. In this connection, Sapphire/WNNX refer to our action in Earle, Pocohantas and Wilson, Arkansas, and Como and New Albany, Mississippi, 10 FCC Rcd 8270 (1995), in which we accepted a statement from the licensee of Station KPOC-FM consenting to the necessary channel and transmitter site change. That decision does not preclude dismissal of the Application for Review in this proceeding. In Earle, the proponent included the necessary license modification proposal in that proceeding. In doing so, we were able to take a final action modifying the Station KPOC-FM license in that proceeding. In contrast, SFX Broadcasting filed a one-step application to downgrade its allotment separate from this proceeding. As a result, SFX Broadcasting could have downgraded its allotment regardless of the ultimate decision in this proceeding. This procedure would have permitted SFX Broadcasting to accommodate the Sapphire Broadcasting proposal in this proceeding as well as any other potential application or rulemaking proposal. The fact that Sapphire Broadcasting chose not to make SFX Broadcasting a party in this proceeding does not now justify going forward with a rulemaking proposal contingent on favorable action on an application that is not even on file.

7. As a result of the action subsequent to the Report and Order cancelling the Station WSSL construction, the Sapphire Broadcasting proposal does not now comply with the applicable separation requirement set forth in Section 73.207(b) of the Rules and cannot be favorably considered. Section 73.208 of the Rules clearly specifies the applicable reference point to be used in determining FM minimum separations as "authorized" transmitter sites. 47 C.F.R. §73.208(a)(1)(i). In this situation, the licensed Station WSSL transmitter site represents the only authorized site for Station WSSL and Sapphire Broadcasting or any other rule making proponent must meet the separation requirement for this site. In regard to this proceeding, the proposal for a Channel 263C1 allotment at Sandy Springs is short-spaced to the authorized site of Station WSSL regardless of any disposition of the Application for Review. As such, the Application for Review is devoid of practical significance and is moot. We see no countervailing public interest benefit in considering this Application for Review or otherwise continuing this proceeding. At this juncture, the appropriate action is dismissal of the Application for Review and termination of this proceeding.⁴

⁴At this time, there is no assurance that the licensee of Station WSSL will file a new application to downgrade its allotment and relocate its transmitter site, and whether the application will ultimately be granted and the facilities licensed. In the event the Station WSSL

8. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Sapphire Broadcasting, Inc. IS HEREBY DISMISSED.

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
Mass Media Bureau

impediment to a Channel 263C1 allotment at Sandy Springs is eliminated, either through an application or rulemaking procedure, Sapphire Broadcasting could then refile the Sandy Springs proposal.