

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-107
Table of Allotments,)	RM-9023
FM Broadcast Stations.)	
(Potts Camp and Saltillo, Mississippi))	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 3, 1998

Released: June 19, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 12 FCC Rcd 3712 (1997), issued in response to the request of Ovie E. Sisk ("petitioner"), licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi, proposing the reallocation of Channel 240C3 from Potts Camp to Saltillo, Mississippi, and the modification of Station WCNA(FM)'s license accordingly. Petitioner filed comments supporting its proposal. Broadcasters & Publishers, Inc. ("BPI") filed a counterproposal.¹ Petitioner and BPI each filed reply comments. After the record closed, BPI filed a Petition for Leave to File Supplement to Comments, Motion for Leave to File Response to Supplemental Comments and a Response to Supplement to Comments and Counterproposal of Broadcasters & Publishers, Inc.² For the reasons discussed below, we deny the proposed reallocation and license modification.

2. Petitioner filed comments describing Saltillo as a growing and thriving community in need of local service. It submits that the population of Saltillo has increased 259 percent over the past 25 years while the population of Potts Camps has declined approximately 18 percent since 1970. Petitioner states that according to the Mayor of Saltillo, over the past few years the community has issued 387 building permits. As a result of Saltillo's growth, the community has a new high school. Additionally, petitioner advises that Saltillo has four physicians and

¹ BPI's counterproposal was found to be unacceptable and was not placed on public notice. BPI requests the allotment of Channel 275C3 to Saltillo, Mississippi. Although BPI styled its request as a counterproposal, a staff engineering review indicates that the proposal does not constitute a counterproposal. A counterproposal is a proposal for an alternative and mutually exclusive allotment to an allotment request set forth in a Notice of Proposed Rule Making. BPI's counterproposal is not mutually exclusive with the proposal set forth in Notice herein and thus will not be considered.

² In view of our action not accepting the BPI counterproposal, we need not consider the late-filed pleadings.

approximately 100 businesses. With respect to the level of commercial activity in Saltillo, petitioner attributes the community with supermarkets, drug stores, building supply stores, recreational facilities, car dealers, service stations, convenience stores, and fast food restaurants. In contrast, petitioner states Potts Camp has no dentists or supermarkets, and no more than ten stores. Further, petitioner remarks that as a result of budgetary constraints affecting community services, it now has only one policeman who works part-time, and that for six months Potts Camp has no police protection at all. Further, petitioner advises that the Potts Camp city hall is now open only three hours per weekday and that the mayor's position is also part-time. Petitioner believes that Potts Camp has declined to the degree that it is no longer a *bona fide* community worthy of an allotment. Petitioner argues that since the time WCNA(FM) became operational in October 1995, it has sold no advertising to anyone in Potts Camp or in the immediate area. Petitioner claims the reallocation of Channel 240C3 to Saltillo would result in a preferential arrangement of allotments since the station would be able to serve a larger number of people. Moreover, it argues that Potts Camp will continue to receive city grade service from Station WCRV(AM), Collierville, Tennessee, and Station WWKZ(FM), New Albany, Mississippi. Petitioner claims that no white or gray areas would be created by this proposal. Moreover, petitioner asserts that while Station WCNA(FM) presently serves 70,840 persons, the reallocation to Saltillo would enable it to serve 127,076 persons, representing an increase of 56,236 persons (+79%). Further, petitioner remarks that although 49,293 persons would lose their service from Station WCNA(FM), 105,529 persons would gain new service. Petitioner claims that the entire loss area now receives coverage from at least 39 radio stations. Finally, petitioner remarks that the Commission has previously reallocated channels from one community to another, even when the first community would lose its only local full-time service, in situations in which the first community had suffered a substantial decline in population and prosperity, citing Noalmark Broadcasting Corporation ("Noalmark"), 50 R.R.2d 755 (1981).

3. BPI filed comments opposing the petitioner's reallocation proposal, noting that petitioner failed to cite any Commission precedent for the proposition that Potts Camp should not be deemed a community for allotment purposes. BPI states that Saltillo is deserving of a local broadcast transmission service but not at the expense of removing Potts Camp's only local transmission service.

4. In reply comments, petitioner argues that Potts Camp cannot support its own local station. In support of this contention, petitioner has submitted a signed declaration of Marie Tate, the town clerk for both Potts Camp and Myrtle, Mississippi. She states that Potts Camp does not have a supermarket, but does have a small grocery store and a convenience store with gas pumping facilities. Ms. Tate also advises that the community has part-time police protection. Additionally, although Potts Camp has a medical clinic and pharmacy, Ms. Tate reports that a doctor is in presence there only one-half day per week. Ms. Tate's declaration also states that although Potts Camp has approximately ten small businesses, in her opinion only one of those commercial establishments could possibly afford to advertise. In support of Ms Tate's opinion, petitioner conducted a survey of twelve commercial and service establishments in and around Potts Camp. According to the survey results, only three businesses plan to purchase any radio advertising on any station. Among those, two plan to spend only \$200 to \$500 during the year,

while one plans to spend \$500 to \$1,000 annually on radio advertising. Petitioner submits that such a small amount of advertising could hardly support the operation of a radio station for a year. In addition, petitioner notes that while three businesses stated that they might buy radio advertising, none of them indicated that they planned to purchase any time on WCNA(FM). Therefore, petitioner asserts that the lack of local interest in WCNA(FM) is quite evident. Petitioner also submitted photographs which it believes reflect the run-down condition of the establishments in Potts Camp. Petitioner contends that the photographs clearly depict a small community which has declined to the point that it can be considered no more than a quiet village, and therefore not deserving of community status for allotment purposes. In sum, petitioner states that the proposed reallocation of Channel 240C3 from Potts Camp to Saltillo would provide the growing community of Saltillo with its first transmission service and would allow WCNA(FM) to serve 79 percent more people.

Discussion

5. Petitioner questions the status of Potts Camp as a community for allotment purposes and states that it should be considered a "quiet village".³ Initially, we will examine petitioner's claim that Potts Camp may no longer be a *bona fide* community for allotment purposes. The Commission has defined "communities" as geographically identifiable population groups. This requirement is generally satisfied if a community is incorporated or listed in the U.S. Census. In this case, Potts Camp is an incorporated community with a 1990 U.S. Census population of 483 persons and has its own post office.⁴ Review of petitioner's own submission indicates that Potts Camp has a local government, police and some businesses. Therefore, we do not believe petitioner has provided sufficient evidence to support its contention that Potts Camp is no longer a community for allotment purposes.⁵

6. Having found that Potts Camp remains a community for allotment purposes, we must evaluate the comparative merits of providing Saltillo with its first local aural service while removing the only local service at Potts Camp. In examining a change of community license proposal, we must determine whether the proposal would result in a preferential arrangement of

³ In this case, the "quiet village" doctrine is inapplicable since petitioner's proposal advances a first local service rather than a first competitive aural service. See Debra D. Carrigan, 55 R.R. 2d 96, at 104 (1985).

⁴ We find that petitioner's reliance on Noalmark is misplaced. In that case, Noalmark Broadcasting, licensee of Station KZOR, Humble City, New Mexico, requested to change its community of license to Hobbs, New Mexico, arguing that Humble City had no population. The Commission agreed and found that Humble City crossed the threshold from community status to being a "non-community" because it had no residents, no business establishments or local government. In addition, Noalmark Broadcasting was not changing its technical operation and therefore, no loss of service would occur. Here, no party has filed comments offering such evidence.

⁵ See Cleveland and Ebenezer, Mississippi, 10 FCC Rcd 8807 (1995).

allotments.⁶ This is accomplished by comparing the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities. *See Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities")*, 90 FCC 2d 88 (1982).⁷ In making this determination, we find that Saltillo (population 1,782 persons) would receive its "first local service", which falls under priority (3), and Potts Camp (population 483) would lose its sole local service and also falls under priority (3). A staff engineering analysis reveals that the proposed reallocation of Channel 240C3 to Saltillo would result in a net gain of service to 56,202 persons, while the removal of Station WCNA(FM) from Potts Camp would create a loss area to 31,629 persons within an area of 2,898 square kilometers (1,119 square miles). The analysis also reveals that no urbanized area is involved in this proposal and that the gain area is already well served. The loss area includes 2,190 persons who will receive four full-time reception services and 833 persons that will receive only three full-time reception services. The city of Potts Camp presently receives eleven full-time reception services, while Saltillo receives ten full-time reception services. Pursuant to the FM allotment priorities the petitioner's proposal would normally be favored because its adoption would provide a first local transmission service under priority 3 to the larger community of Saltillo than would occur by retaining the station at Potts Camp. The Commission indicated in the "*Change of Community Order*" that under some very limited circumstances it would consider that the removal of a sole local service may be justified if there are compelling public interest factors to offset the expectation of continued service (such as the provision of a first reception service to a significantly sized population). However, we do not find that situation is applicable here where both the existing and proposed arrangement of allotments trigger the same allotment priority. As stated in *Modification of License MO&O*,

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.

In consideration of the above, we cannot find that the reallocation of Channel 240C3 from Potts Camp to Saltillo, Mississippi provides a public interest benefit of enough significance to outweigh the loss of a transmission service to Potts Camp or offset the disruption of an existing service.⁸

⁶ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

⁷ 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. [Co-equal weight is given to priorities (2) and (3).]

⁸In a related context, the fact that Station WCNA(FM) has not derived significant advertising revenue from businesses in Potts Camp does not justify reallocating the channel under the *FM Allotment Priorities*. In the "*Change of Community R&O*", 4 FCC Rcd 4870 (1989), the Commission stated that "... adherence to the allotment criteria will ensure that any exchange involving a change in the community of license will be made in the public interest and not solely in the financial interests of the participants." *Report and Order* at ¶ 31. Moreover, the Commission has previously determined that economic issues are not relevant in the allotment or

7. Accordingly, IT IS ORDERED, That the petition for rule making filed Olvie E. Sisk to reallocate Channel 240C3 from Potts Camp to Saltillo, Mississippi, IS DENIED.

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

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
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Mass Media Bureau

licensing context. *See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *recon. denied*, 4 FCC Rcd 2276 (1989); *Cheyenne, Wyoming*, 8 FCC Rcd 4473 (1993); and *Albion, Nebraska*, 10 FCC Rcd 3183 (1995), *rev. denied*, 10 FCC Rcd 11927 (1995).