

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 13-282
Table of Allotments,	)	RM-11706
FM Broadcast Stations.	)	
(Bruce, Mississippi)	)	
	)	
Station WTNM(FM), Water Valley, Mississippi	)	File No. BPH-20130725ACP

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: July 17, 2014**

**Released: July 18, 2014**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*,<sup>1</sup> issued in response to a Petition for Rule Making (“Petition”) filed by Telesouth Communications, Inc. (“Petitioner”), licensee of Station WTNM(FM), Channel 288A, Water Valley, Mississippi.<sup>2</sup> Also before us: (1) a Counterproposal and a Response to Reply Comments filed by Elijah Mondy; and (2) Comments, Reply Comments, and a Motion to Dismiss the Counterproposal filed by the Petitioner. For the reasons discussed below, we dismiss the Petition, the Application, and the Counterproposal.

2. **Background.** The *Notice* proposed to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, by substituting Channel 284A for vacant Channel 233A at Bruce, Mississippi. The proposed channel substitution at Bruce would permit Station WTNM(FM) to operate on FM Channel 234A rather than FM Channel 288A at Water Valley, Mississippi. Petitioner filed Comments stating that the Petition and the Application would results in the public interest because Bruce would continue to receive a first local service and Station WTNM(FM) would expand its coverage area.

3. On January 13, 2014, Mondy filed a Counterproposal proposing the allotment of Channel 284A at New Houlika, Mississippi, as the community’s first local service.<sup>3</sup> On February 13, 2014, Mondy filed a FCC Form 301 new station application.<sup>4</sup> Mondy states that New Houlika has a 2010 U.S. Census of 626 persons and has its own police department, fire department, public school system, and U.S. Post Office and zip code (38055), as well as many churches and businesses.

4. Petitioner filed Reply Comments and Motion to Dismiss the Counterproposal arguing that the Counterproposal is defective pursuant to Section 1.401(d) of the Commission’s Rules,<sup>5</sup> because Mondy did not concurrently filed a FCC Form 301 Application with the Counterproposal. Petitioner contends

<sup>1</sup> See *Bruce, Mississippi*, Notice of Proposed Rule Making, 28 FCC Rcd 15904 (MB 2014) (“*Notice*”).

<sup>2</sup> Petitioner has filed a “hybrid” application (“the Application”). See File No. BPH-20130725ACP.

<sup>3</sup> Mondy proposes two sites for the allotment of Channel 284A at New Houlika.

<sup>4</sup> File No. BNPH-20140213ABL.

<sup>5</sup> 47 C.F.R. § 1.401(d)(stating that “[p]etitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate filing fee”).

that the Application could be granted without the proposed channel substitution at Bruce because the license for Station WCMR-FM at Bruce was cancelled, and Channel 233A at Bruce is not listed in the FM Table of Allotments as a vacant channel. Mondy states that Channel 233A at Bruce is a valid vacant allotment. He argues that not filing a FCC Form 301 concurrently with the Counterproposal was an apparent technicality. Mondy claims that the Counterproposal should not be dismissed as defective over this technicality since a first local service at New Houlka would result in the public interest.

5. **Discussion.** We find that there is no need to address Mondy's and Petitioner's arguments because the proposed channels at Bruce and New Houlka, Mississippi are technically defective. Specifically, upon further staff engineering review, we determine that based on uniform terrain the proposed 70 dBu contour would not provide 100 percent city-grade coverage to Bruce as required by Section 73.315 of the Commission's Rules.<sup>6</sup> In addition, we also conclude that the Counterproposal violates Section 73.315 of the Commission's Rules.<sup>7</sup> Specifically, a staff engineering analysis determines that the Counterproposal would not provide 100 percent city-grade coverage to New Houlka at the proposed reference coordinates 34-04-00 NL and 89-10-00 WL.<sup>8</sup> It is Commission policy that a counterproposal must be technically correct and substantially complete at the time it is filed and cannot later be cured.<sup>9</sup> Therefore, we dismiss the Petition, the Application and the Counterproposal for failure to comply with Section 73.315 of the Commission's Rules.<sup>10</sup>

6. We agree with Mondy that FM Channel 233A at Bruce, Mississippi is a valid vacant allotment. When a FM station's authorization is cancelled, the FM channel automatically becomes vacant at the community, CDBS is updated to reflect that the channel is a vacant allotment, and the allotment will be reinstated in the FM Table of Allotments to preserve the opportunity to license a future station in the community prior to auctioning the FM channel under our competitive bidding procedures.<sup>11</sup>

7. Accordingly, we reinstate Channel 233A at Bruce, Mississippi in the FM Table of the Allotments.<sup>12</sup> The window period for filing application for Channel 233A at Bruce, Mississippi, will not be opened at this time. Instead, the issue of opening filing window for this allotment will be addressed by the Commission in a subsequent order.

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<sup>6</sup> 47 C.F.R. § 73.315.

<sup>7</sup> *Id.*

<sup>8</sup> The proposed allotment of Channel 284A at New Houlka, using the *Notice's* reference coordinates (34-02-51 NL and 89-11-41 WL), also violates Section 73.315 of the Commission's Rules.

<sup>9</sup> See *Caldwell, College Station and Gause, Texas*, Memorandum Opinion and Order, 15 FCC Rcd 20641 (2000); see also, *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, Memorandum Opinion and Order, 12 FCC Rcd 2254 (MB 2006); *Fort Bragg, California*, Report and Order, 6 FCC Rcd 5817 (MMB 1991); and *Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas*, Report and Order, 3 FCC Rcd 6507, 6511 n.2 (MMB 1988)(stating that a counterproposal must be technically correct and substantially complete at the time it is filed.)

<sup>10</sup> See *Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223 ¶ 17 "The dismissal, denial or return of any component filing will result in the dismissal or return of all the related filings.").

<sup>11</sup> See, e.g., *Various Locations*, Order, 26 FCC Rcd 14276 (MB 2011)(reinstating certain vacant FM allotments that have become vacant due to the cancellation of the associated authorization); *Auction of FM Broadcast Construction Permits Revised Construction Permit Number in Auction 93*, Public Notice, 26 FCC Rcd 16933 (2011)(announcing the FM construction permits for FM Auction 93).

<sup>12</sup> The reference coordinates for Channel 233A at Bruce, Mississippi are 34-01-17 NL and 89-20-06 WL.

8. **Ordering clauses.** 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, September 2, 2014, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to Bruce, Mississippi, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Bruce, Mississippi	233A

9. 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) .

10. IT IS FURTHER ORDERED, that the Petition for Rule Making, and the Application (File No. BPH-20130725ACP) filed by Telesouth Communications, Inc., IS DISMISSED.

11. IT IS FURTHER ORDERED, that the Counterproposal filed by Elijah Mondy IS DISMISSED.

12. IT IS FURTHER ORDERED, that the proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez  
Assistant Chief  
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