

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

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 12-271 |
| Table of Allotments, |) | RM-11678 |
| FM Broadcast Stations. |) | |
| (Pike Road, Alabama) |) | |
| |) | |
| Applications of Stations WLDA(FM), |) | File No. BPH-20121119ANF |
| Fort Rucker, Alabama (Facility ID No. 63945), |) | File No. BPH-20121119AOD |
| WDJR(FM), Enterprise, Alabama (Facility ID |) | File No. BPH-20121119AOG |
| No. 25575), and WDBT(FM), Hartford, Alabama |) | |
| (Facility ID No. 62206), to Upgrade and Change |) | |
| Communities of License ¹ |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 20, 2014

Released: November 21, 2014

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making* (“*Notice*”),² issued in response to a Petition for Rule Making (“*Petition*”) filed by Alatron Corporation, Inc. (“*Petitioner*”); (2) a Joint Counterproposal consisting of three hybrid Applications (the “*Applications*” or “*Counterproposal*”) filed on November 19, 2012, by Southeast Alabama Broadcasters, LLC (“*Southeast*”), licensee of Station WLDA(FM), Fort Rucker, Alabama and Gulf South Communications, Inc. (“*Gulf South*”), licensee of Stations WDJR(FM), Enterprise, Alabama and WDBT(FM), Hartford, Alabama (“*Joint Parties*”); (3) Comments filed by the *Petitioner*; and (4) related pleadings.³ For the reasons set forth below, we deny the *Petition* and grant the *Counterproposal*.

2. **Background.** The *Notice* proposed to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules,⁴ by adding FM Channel 228A as a second local service at Pike Road, Alabama.⁵ *Petitioner* submitted timely comments, reiterating its interest in the allotment.

¹ The communities of Fort Rucker, Enterprise and Hartford, Alabama have been added to the caption. See *Public Notice*, Report No. 2972 (Jan. 24, 2013).

² *Pike Road, Alabama*, Notice of Proposed Rule Making, 27 FCC Rcd 11412 (MB 2012).

³ See ¶¶ 4 and 8, *infra*. Three Notch Communications LLC (“*Three Notch*”) filed an Opposition.

⁴ 47 C.F.R. § 73.202(b).

⁵ A daytime AM Station, WTXK, is licensed to the community of Pike Road.

3. In response to the *Notice*, the Joint Parties filed a Counterproposal and three hybrid Applications pursuant to Section 73.3517(e) of the Commission's rules.⁶ One of the Applications requests to change transmitter site and upgrade the facilities of Station WLDA(FM) (formerly WJLR(FM)), from Channel 280C3, to Channel 280C2 at Fort Rucker, Alabama.⁷ In order to facilitate that upgrade, we issued, at the Joint Parties' request, an *Order to Show Cause*⁸ to Three Notch as why its channel for Station WAAO(FM), Andalusia, Alabama, should not be changed from Channel 279A to Channel 229A.⁹ The second of the Applications requests a change of community of license for Station WDBT(FM), from Channel 229C1 at Hartford, Alabama, to Channel 228A at Hope Hull, Alabama, as the community's first local service, and a change of transmitter site.¹⁰ To prevent the removal of Hartford's sole local service, the third Application requests a change of community of license but no facility modification for Station WDJR(FM), Channel 245C0, from Enterprise, Alabama, to Hartford, as a "backfill."¹¹

4. The Joint Parties state that the primary public interest benefit of the three applications is the provision of a first local service by relocating WDBT to Hope Hull, an allotment which is mutually exclusive with the proposed new allotment of Channel 228A at Pike Road. The Joint Parties state that Hope Hull has a population of 1,260 persons, its own post office and zip code, an elementary school, a private school, the Hope Hull Women's Club, several churches, and numerous businesses. The Joint Parties argue that Hope Hull is a community deserving of a first local service, and that grant of the Counterproposal therefore would constitute the preferred arrangement of allotments.¹² The Counterproposal is mutually exclusive with the *Notice*'s proposal. Specifically, Channel 228A allotment at Pike Road conflicts with Channel 228A at Hope Hull, Alabama, under the Commission's minimum distance separation requirements.¹³ Accordingly, we will consider the Counterproposal in this proceeding.

5. In response to the *OSC*, Three Notch filed an Opposition to Order to Show Cause ("Opposition"). Three Notch argues that it has made significant capital investment to replace worn-out equipment and to improve the functionality of WAAO's facilities, and the Joint Parties have been unable to demonstrate the logistics of a workable plan to reimburse WAAO for the cost of implementing the proposed channel substitution.

⁶ 47 C.F.R. §73.3517(e).

⁷ See File No. BPH-20121119ANF.

⁸ See *Letter to Three Notch Communications, LLC*, Reference 1800B3 (MB Jan. 18, 2013) ("*OSC*").

⁹ Southeast states that it will reimburse Station WAAO-FM for its reasonable expenses for the channel change in accordance with the guidelines set forth in *Circleville, Ohio*, Second Report and Order, 8 FCC2d 159 (1967) ("*Circleville*").

¹⁰ See File No. BPH-20121119AOG.

¹¹ See File No. BPH-20121119AOD.

¹² See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982) 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) ("*FM Allotment Priorities*").

¹³ See 47 C.F.R. § 73.207.

6. **Discussion.** A staff engineering analysis has revealed that there are no alternate channels available at Pike Road, Alabama. Accordingly, the proposals must be compared.

7. We find that the Counterproposal would result in preferential arrangement of allotments under *FM Allotment Priorities*. First, the allotment of Channel 228A to Hope Hull, Alabama, as the community's first local service (Priority 3) is preferred to the allotment of Channel 228A to Pike Road, Alabama, as the community's second local service (Priority 4). In addition, the proposed change of community of license by Station WDBT from Hartford, Alabama to Hope Hull, Alabama would accommodate the upgrade of Station WLDA(FM), from Channel 280C3 to Channel 280C2.¹⁴ Although Hope Hull is not incorporated and is not listed in the 2010 U.S. Census, Gulf South has presented enough evidence to support Hope Hull's community status.¹⁵ Accordingly, we find Hope Hull is a community deserving of its own local service.¹⁶

8. As to the involuntary modification of the license of Station WAAO(FM), we find that Three Notch has not raised a substantial and material question of fact that would warrant a hearing on the modification of Station WAAO(FM)'s license to specify operation on Channel 229A in lieu of Channel 279A at Andalusia. As we have previously stated, "[i]t is well settled that the substitution of an existing station's channel serves the public interest where the substitution permits the provision of new or expanded service at another community."¹⁷ In this instance, the proposed channel substitution and license modification for Station WAAO(FM) is in the public interest and, therefore, permissible under Section 316(a) of the Communications Act of 1934, as amended,¹⁸ because it will permit expanded service at Fort Rucker, and promote the provision of a first local service at Hope Hull.

9. Consistent with *Circleville*, Southeast will be required to reimburse Three Notch for its reasonable and prudent costs associated with the involuntary channel change at Andalusia, and Southeast has already committed to do so. Although Three Notch claims that it does not have the wherewithal to incur the engineering and equipment costs of implementing the channel change, it has not provided a sufficient basis for departing from the procedures set forth in *Circleville*. Specifically, Three Notch has

¹⁴ Our independent engineering analysis shows that the relocation of WDBT from Hartford to Hope Hull will result in a net loss of 181,747 persons, due to the channel class change from Channel 229C1 to 228A. The upgrade of WLDA's facilities from Channel 280C3 to Channel 280C2 will produce a net gain of 66,623 persons. WDJR will experience no change, so the overall net effect of the Counterproposal is a loss of 115,124 persons. In addition, WDBT's change of community will leave 2,938 persons with four reception services, 660 persons with three services, and 378 persons with two services. Under the Commission's *FM Allotment Priorities*, we do not consider underserved listeners and net loss of service under Priority 3.

¹⁵ See *Semora, North Carolina*, Memorandum and Opinion, 5 FCC Rcd 934, 935 (1990) (finding that the community not incorporated or listed in the U.S. Census is a community for allotment purposes).

¹⁶ The proposed 70 dBu contour at Hope Hull would cover 1.8 percent of the Montgomery, Alabama, Urbanized Area, but the facilities could not be relocated pursuant to a minor modification application to serve 50 percent or more of an urbanized area. Accordingly, the Urbanized Area service presumption does not apply here. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2567 (2011) (subsequent history omitted).

¹⁷ *Americus and Emporia, Kansas*, Report and Order, 21 FCC Rcd 7258, 7259 (MB 2006) (ordering an involuntary channel substitution for an existing station to accommodate a first local service at another community).

¹⁸ 47 U.S.C. § 316(a) (permitting the modification of a station's license or construction permit to promote the public interest).

not cited any case in support of its position and has not provided specific documentation regarding its financial circumstances. Finally, it is not necessary to delay our decision pending the development “of a workable [reimbursement] plan;” the parties are responsible for negotiating the details and logistics of reimbursement.¹⁹

10. **Ordering Clauses.** Accordingly, IT IS ORDERED, that the petition for rule making filed by Alatron Corporation, Inc., to allot Channel 228A at Pike Road, Alabama, IS DENIED; and

11. IT IS FURTHER ORDERED, that the Form 301 minor change application filed by Southeast Alabama Broadcasters, LLC, licensee of Station WDLA(FM), Fort Rucker, Alabama, to upgrade the facilities of that station to operate on Channel 280C2, File No. BPH-20121119ANF, IS GRANTED; and

12. IT IS FURTHER ORDERED, that the Form 301 minor change application of Gulf South Communications, Inc., licensee of Station WDJR(FM), Channel 245C0, to change the station’s community of license, from Enterprise, Alabama, to Hartford, Alabama, File No. BPH-20121119AOD, IS GRANTED; and

13. IT IS FURTHER ORDERED, that the Form 301 minor change application of Gulf South Communications, Inc., licensee of Station WDBT(FM), to change the station’s channel and community of license from Channel 229C2, Hartford, Alabama, to Channel 228A, Hope Hull, Alabama, File No. BPH-20121119AOG, IS GRANTED; and

14. IT IS FURTHER ORDERED, that effective January 5, 2015, the Media Bureau’s Consolidated Data Base System will reflect Channel 229A at Andalusia, Alabama, as the reserved assignment for Station WAAO(FM), in lieu of Channel 279A; and

15. IT IS FURTHER ORDERED, that pursuant to Section 316 of the Communications Act of 1934, as amended, the license for Station WAAO-FM, Andalusia, Alabama, is modified to specify operation on Channel 229A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize changes in transmitter location or to avoid the necessity of filing environmental assessments pursuant to 47 C.F.R. § 1.1307; and

16. IT IS FURTHER ORDERED, that Southeast Alabama Broadcasters, LLC, shall reimburse Station WAAO(FM) for its reasonable and prudent costs associated with changing from operation on FM Channel 279A to Channel 229A at Andalusia, Alabama; and

17. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

18. This document is not subject to the Congressional Review Act. The Commission is,

¹⁹ *Castle Rock and Colorado Springs, Colorado, et al.*, Report and Order, 7 FCC Rcd 7688, 7670 (MMB 1992) (time and manner of reimbursement are matters left to the good faith negotiations of the parties).

therefore, not required to submit a copy of this Report and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because the proposed rule was denied.

19. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

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