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

MM Docket No. 88-614

In the Matter of:

Amendment of Section 73.202(b)
Table of FM Allotments,
FM Broadcast Stations.
(Terrell, Texas, and
Daingerfield, Texas)

MEMORANDUM OPINION AND ORDER

Adopted: December 5, 1988; Released: January 24, 1989

By the Chief, Policy and Rules Division:

1. Before the Commission is a Petition For Reconsideration filed by Metro Broadcasters, Inc. (Metro), licensee of Station KTLR(FM), Channel 296A, Terrell, Texas, of the Commission's action returning Metro's Petition For Rule Making and for Order To Show Cause (Petition).

2. In its Petition, Metro proposed the substitution of Channel 295C1 for Channel 295A at Terrell and requested issuance of an order to show cause why its license should not be modified to specify operations on Channel 295C1. Metro stated, however, that because the proposed upgrade at Terrell is mutually exclusive with Channel 295A at Daingerfield, Texas,[1] the substitution of Channel 295C1 at Terrell could be accomplished only if Channel 235C2 is substituted for Channel 295A at Daingerfield. Metro indicated in an engineering statement it submitted in support of its Petition that there is only one site from which a station operating on Channel 235C2 at Daingerfield can comply with all applicable minimum distance spacing requirements and also provide the community of Daingerfield with city-grade coverage in compliance with the requirements of Section 73.315 of the Commission's Rules.[2] It noted in that statement that that site is located 33.0 kilometers north of Daingerfield.

3. The Bureau returned Metro's Petition, because the proposed substitution at Daingerfield would not comply with the Commisssion's Rules. Assuming operation at Daingerfield of a Class C2 facility at a maximum power of 50 kw and a maximum antenna height of 150 meters HAAT, a city-grade signal would extend only 32.6 kilometers. Because Metro's proposed restricted site is located 33 kilometers from Daingerfield, it did not appear possible for Metro to provide city-grade coverage to Daingerfield in compliance with the requirements of Section 73.315. [3]

4. In its Petition For Reconsideration, filed December 17, 1987, Metro requests, with respect to the proposed Daingerfield upgrade, a waiver of Section 73.315 of the Rules. First, it asserts that the 0.4 kilometer difference between the predicted 32.6-kilometer distance at which a Class C2 Daingerfield station would provide city grade coverage and the 33.0-kilometer distance from its restricted site to Daingerfield is *de minimis*. Metro further submits that if Channel 295A at Daingerfield is upgraded, the signal of the upgraded Channel will serve a much larger area and population. In its waiver request, Metro also states that it intends to submit an engineering study as a supplement to its Petition For Reconsideration. The request, however, does not provide any information about the contents of the supplement. No supplement to the Petition For Reconsideration has been received.

5. Metro's Petition will be denied. Generally, the Commission's consideration of requests for waiver of the city grade coverage requirement of Section 73.315 is limited to the application context. *See Greenwood, Seneca, Aiken and Clemson, South Carolina*, 3 FCC Rcd 4108 (1988). Moreover, Metro has not met its burden for justifying a waiver. Its unsupplemented Petition for Reconsideration does not provide a basis for consideration of a waiver.

6. Accordingly, the Petition For Reconsideration filed by Metro Broadcasters, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes, Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Daingerfield, Texas was one of 689 communities to which the Commission assigned new FM channels in 1985. *See* the *First Report and Order* in MM Docket 84-231, 50 Fed. Reg. 3514 (January 25, 1985).

[2] The coordinates of the site specified by Metro for operation at Daingerfield on Channel 235C2 are 33-19-35 and 94-44-10.

[3] In the letter returning the Petition, the Bureau also informed Metro that the site of Metro's proposed upgrade to Channel 235C2 at Terrell was short-spaced to an upgrade proposal in Arlington, Texas, to a proposed allotment in McKinney, Texas, to a vacant assignment in Granbury, Texas, and to an application for the Granbury assignment which had been dismissed but for which an Application for Review was pending. The letter did not state that these short-spacings constituted a second reason for the return of the Petition in addition to Metro's Section 315 violation noted *supra*. In its Petition For Reconsideration, Metro treated the Bureau's short-spacing findings as though they were a basis for the return of the Petition and accordingly opposed each such finding. Since Metro's inability to comply with Section 73.315 provided the sole basis for the return of Metro's Petition, we need not address Metro's oppositions to the Bureau's short-spacing determinations.