

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

MM Docket No. 88-386

In the Matter of

Amendment of Section 73.202(b), RM-6413
Table of Allotments,
FM Broadcast Stations.
(Orlando, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 20, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Radio Orlando (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 53 FR 30854, published August 16, 1988, proposing the substitution of Channel 255C2 for Channel 255A at Orlando, Florida, and the modification of its construction permit for Station WURG to specify operation on the higher powered channel.¹ Petitioner filed comments reaffirming its intention to apply for Channel 255C2, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 255C2 for Channel 255A at Orlando, Florida, since it could enable Station WURG to expand its coverage area. Channel 255C2 can be allotted to Orlando in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) west to avoid a short-spacing to Station WKGR, Channel 254C, Fort Pierce, Florida.² As proposed, we shall also modify petitioner's construction permit to specify operation on Channel 255C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 10, 1989, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Orlando, Florida	222C, 243C, 255C2, 262C, 286C

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Radio Orlando for Station WURG, Orlando, Florida, IS MODIFIED to specify operation on Channel 255C2, in lieu of Channel 255A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

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

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

¹ Radio Orlando is the successor-in-interest to Urban Broadcasting Corporation which originally sought the channel.

² The coordinates for this allotment are North Latitude 28-33-00 and West Longitude 81-25-30.

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

MM Docket No. 87-264

In the Matter of

Amendment of Section 73.202(b), RM-5729
Table of Allotments, RM-6097
FM Broadcast Stations.
(Live Oak and St. Augustine, Florida)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 13, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of WNER Radio, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 4326 (1987), proposing the substitution of Channel 251C for Channel 251C1 at Live Oak, Florida, and the modification of its license for Station WQHL(FM) to specify operation on the higher powered channel.² Petitioner, Bohanan Associated Broadcasters, Inc. (Bohanan) and Shull Broadcasting Co., Inc. (Shull) filed comments. Shull also filed a counterproposal requesting the substitution of Channel 250C2 for Channel 249A at St. Augustine, Florida, and the modification of its license for Station WUVU(FM) to specify operation on the higher powered channel.³ Petitioner filed reply comments. Shull filed comments in response to petitioner's reply comments.⁴

2. Shull, licensee of Station WUVU, Channel 249A, St. Augustine, Florida, counterproposes the substitution of Channel 250C2 for its Class A facility, and the modification of its license accordingly. It states that the substitution of channels, assuming maximum Class C2 facilities, would provide new service to an area of 4,599 square kilometers with a total of 675,407 persons. It contrasts this to the figures provided by petitioner which state that the upgrade of Station WQHL at Live Oak would result in a gain of 9,627 square kilometers but only 101,651 persons. Based on the comparison of population gain, Shull submits that its proposal would clearly better serve the public interest. In addition, it states that Station WQHL was already provided with an opportunity to upgrade to Class C but instead voluntarily accepted its present Class C1 facilities. However, it believes that both requests can be accommodated if Channel 251C at Live Oak were site restricted to an area approximately 47 kilometers west of petitioner's proposed site, thus allowing Station WUVU to relocate its transmitter north of St. Augustine. Shull contends that these site restrictions would enable Station WQHL's 1 mV/m service contour to encompass 382,641 persons in lieu of the 175,260 envisioned by petitioner, and allow Station WUVU to increase its service area to encompass 713,704 persons from its present 38,297 persons. Finally, it notes that the Live Oak site restriction

would also create a larger transmitter site area for Station WZKS at Jesup, Georgia, which seeks to upgrade from a Class A to Class C1 facility.

3. Bohanan, licensee of Station WZKS(FM), Jesup, Georgia, supports the Shull counterproposal to the extent that it would impose a 47 kilometer west site restriction on Channel 251C at Live Oak. Alternatively, it requests that Station WQHL be site restricted no farther northeast than the coordinates which petitioner specified in its petition for rule making. At the time Bohanan filed its comments it had before the Commission a request to substitute Channel 252C1 for Channel 252A at Jesup and the modification of its license accordingly. It states that the imposition of a site restriction on the Live Oak allotment would allow Station WZKS(FM) a reasonable land area in which to relocate its transmitter.⁵

4. Petitioner states that Live Oak presently receives local service from only one FM and one AM station, that being co-owned Stations WQHL and WNER(AM), while St. Augustine receives local service from two FM and two AM stations, including Shull's co-owned Stations WUVU and WFOY(AM). It argues that its proposal should be preferred under the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). It submits that a grant of its request would enable Station WQHL to provide service to 2100 square kilometers of white area and 787 square kilometers of gray area while Shull's proposal for St. Augustine will provide no such first or second aural service.⁶ Petitioner also disputes Shull's contention that there is some indication that there is no substantial public interest to be served by the proposed Live Oak upgrade since petitioner "apparently [earlier] assessed that a Class C facility in Live Oak was not desirable." Petitioner states that Station WQHL was initially granted as a Class C station with 50 kW power in 1972. Its current facilities of 50 kW effective radiated power (ERP) at 112 meters height above average terrain (HAAT) were reconstructed in 1984 after a tornado destroyed a portion of the tower it shared with co-owned Station WNER-AM. In preparing to rebuild its antenna, petitioner states that it discovered that the antenna reference coordinates on file with the Commission were incorrect and that using correct coordinates would only permit the use of Class C1 facilities at their present site. Therefore, it opted to build a Class C1 facility at its present site rather than continue to operate under special temporary authority at reduced power and height for the extended period of time it would take to locate and obtain approval to operate from a new site which would permit Class C facilities. Petitioner goes on to state that had it not been for the tornado and subsequent discovery of the error in the coordinates for Station WQHL's transmitter site, it would have sought the upgrade much earlier.

5. Petitioner also opposes the allotment of 251C with a 47 kilometer west site restriction. It agrees that compliance with the site restriction could permit continued coverage to all of Live Oak, even though it believes that its choice of transmitter site would be severely restricted. However, according to petitioner, the adoption of Shull's counterproposal would eliminate the present service provided by Station WQHL to underserved listeners in the three counties east of the community who now depend on its programming, while merely providing an additional service from WQHL to the already well-served areas adjacent to Tallahassee. Petitioner states that the latest Arbitron survey showed Station WQHL to be the number

one ranked station in the three counties east of Live Oak. Further, petitioner states that it receives 35-40% of its advertising revenue from that area. It does not dispute the total population gain figures which Shull attributes to an upgraded Station WUVU. However, it states that virtually all of the newly served population resides in the area south of Jacksonville, Florida, which it claims is already well served. Therefore, petitioner submits that the only benefit accruing from the imposition of a 47 kilometer site restriction on Channel 251C at Live Oak would be to further Shull's private interest. In comparing the two proposals, petitioner states that Shull provides no first or second fulltime aural service from either its present or proposed facility. In contrast, it states that Station WQHL provides first and second aural service to a substantial area which would be increased by the allotment of Channel 251C. Using the methodology for computing gain area as set forth in *Greenup, Kentucky*, 2 FCC Rcd 4319 (1987), petitioner provides the following chart:

	First Service	Second Service	Total	Gain	Percent
WUVU LICENSED FACILITIES					
Area (Sq. km.)	0	0	0	--	--
Population	0	0	0	--	--
WQHL LICENSED FACILITIES					
Area (Sq. km.)	2,725	1,313	4,038	--	--
Population	21,332	7,297	28,629	--	--
SHULL COUNTERPROPOSAL FOR WUVU					
Area (sq. km.)	0	0	0	0	0.00%
Population	0	0	0	0	0.00%
WQHL PROPOSAL					
Area (sq. km.)	4,134	3,170	7,304	3,266	80.00%
Population	23,637	19,726	43,363	14,734	61.75%
SHULL COUNTERPROPOSAL FOR WQHL					
Area (sq. km.)	3,109	2,561	5,670	1,632	40.41%
Population	22,423	17,979	40,402	11,773	41.22%

6. Petitioner also notes that Ronald Seggi (Seggi) has requested the allotment of Channel 251A to Flagler Beach, Florida (RM-5937). According to petitioner, this request, which is mutually exclusive with the allotment of Channel 250C2 at St. Augustine, would be favored over the upgrade since it represents a first local service. While it has been informally advised that Seggi has requested dismissal of its proposal, it argues that administrative efficiency would "appear to dictate" that the Commission issue a Further Notice seeking expressions of interest in use of a Flagler Beach allotment.⁷ Finally, petitioner states that Bohanan's Jesup, Georgia, upgrade is not mutually exclusive with its proposal at Live Oak, pointing out that Bohanan's own study indicates that the requested upgrade at Live Oak would provide ample useable area for Station WZKS(FM) at Jesup.

7. In response, Shull states that the first and second fulltime service figures presented by petitioner are not persuasive. It points out that the figures are based on minimum Class C facilities of 100 kW and 300 meters which are virtually identical to that which can be ob-

tained if Station WQHL increases its operation to the maximum Class C1 facilities of 100 kW and 299 meters. Shull argues that petitioner's decision to voluntarily downgrade Station WQHL to a Class C1 in 1984 and its present proposal reflecting minimum Class C facilities suggest that it has no intention of ever constructing the full facilities possible with a Class C allotment. Therefore, it argues that the protection of Station WQHL as a full Class C, but employing only minimum Class C facilities, would provide the station with more protection than necessary while also preventing other area stations, including Station WUVU at St. Augustine, from improving their service.

DISCUSSION

8. Based on the record before us, we believe the public interest would be served by substituting Channel 250C2 for Channel 249A at St. Augustine and denying the substitution of Channel 251C for Channel 251C1 at Live Oak. In *Revision of FM Assignment Policies and Procedures, supra*, the Commission set forth the following priorities:

- (1) First fulltime aural service;
- (2) Second fulltime aural service;
- (3) First local service;
- (4) Other public interest matters.

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

Petitioner contends that it will provide a first and second fulltime service to 14,734 persons within a 7,304 square kilometer area. However, it appears that this figure is based on the actual facilities currently being used by Station WQHL (58 kW at 112 meters). When correctly computed, using maximum facilities for all classes of stations except Class C, where minimum facilities are assumed, we find that the allotment of Channel 251C to Live Oak would not provide any significant second aural service and a first aural service only to the very small community of Keatons Beach, Florida (U.S. Census population of 60 persons), a figure we consider *de minimus*. Therefore, our decision must rest on the fourth category, other public interest matters. In determining which of the two proposals would better serve the public interest, we have evaluated the area and population which would gain service from a grant of the respective proposals. Our study uses the methodology set forth in *Greenup, Kentucky, supra*, which assumes maximum facilities for Class A through C1 stations and minimum facilities for Class C stations. The result of our study is as follows:

Station WQHL, Live Oak

City

Channel No.

St. Augustine, Florida

250C2, 288A

County	% Covered by Class C1	% Covered by Class C	% Increase for County	Total Pop. of County	Gain in Pop. Served
Brooks, GA	10%	60%	50%	15,255	7,628
Lowndes, GA ⁸	70%	90%	20%	30,376	6,075
Lanier, GA	10%	30%	20%	5,654	1,131
Clinch, GA	50%	40%	-10%	6,660	-666
Total for Georgia Counties:			14,168		
Jefferson, FL	0%	30%	30%	10,703	3,211
Madison, FL	90%	100%	10%	14,894	1,489
Taylor, FL	60%	95%	35%	16,532	5,786
Dixie, FL	30%	30%	0%	7,751	--
Gilchrist, FL	70%	40%	-30%	5,767	-1,730
Alachua, FL ⁹	10%	0%	-10%	69,977	-6,998
Union, FL	80%	20%	-60%	10,166	-6,100
Baker, FL	70%	10%	-60%	15,289	-9,173
Total for Florida Counties:			-13,515		

Total Gain in Population Served: **653**

Station WUVU, St. Augustine

St. Johns, FL	60%	100%	40%	51,303	20,521
Flagler, FL	0%	25%	25%	10,913	2,728
Putnam, FL	0%	30%	30%	50,549	15,165
Clay, FL	0%	60%	60%	67,052	40,231
Duval, FL ¹⁰	0%	50%	50%	30,083	15,042
Jacksonville, FL (City)	0%	90%	90%	540,920	486,828

Total Gain in Population Served: **580,515**

Thus, as can be seen from the above figures, the allotment of Channel 250C2 to St. Augustine will provide a new service to far more people, even if we were to exclude the population residing within Jacksonville, than would the allotment of Channel 251C to Live Oak. Further, we note that petitioner has made no commitment to seek more than minimum Class C facilities which are very nearly the same facilities which can be used if it were to upgrade to maximum Class C1. Therefore, we believe that the allotment of Channel 250C2 to St. Augustine should be preferred. We recognize that Channel 251C can be allotted to Live Oak with a 47 kilometer west site restriction. However, petitioner has stated that it would not accept such a site restriction.

9. Channel 250C2 can be allotted to St. Augustine in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) north to avoid a short-spacing to the proposed substitution of Channel 250C for Channel 250C1 at Clearwater, Florida, for Station WKRL-FM and the construction permit of Station WSCF, Channel 251C2 at Titusville, Florida.¹¹

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 10, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Shull Broadcasting Co., Inc. for Station WUVU, St. Augustine, Florida, IS MODIFIED to specify operation on Channel 250C2, in lieu of Channel 249A, 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).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

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

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

¹ The community of St. Augustine has been added to the caption.

² By letter of September 28, 1988, Day Communications, Inc. states it is now the licensee of Station WQHL and expresses its continuing interest in the modification of the station from Channel 251C1 to Channel 251C. See BALH-880523GK, granted July 27, 1988.

³ Public Notice of the counterproposal was given on October 2, 1987, Report No. 1683.

⁴ Shull requests acceptance of its additional comments. It recognizes that the Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment cycle. However, it argues that petitioner's response to the counterproposal presented, for the first time, technical information concerning the white and gray area service that petitioner earlier claimed would occur as a result of the upgrading of Station WQHL at Live Oak. Petitioner filed a Motion to Strike Shull's further comments. It contends that there was no need to present detailed information concerning white and gray area service prior to the filing of Shull's counterproposal. However, since the data was prepared in accordance with the Commission's required methodology, petitioner argues that Shull need not

have awaited the presentation of the information but could have undertaken its own study. We agree that Shull could have obtained the white and gray area coverage information prior to its submission by the petitioner. However, we believe that the public interest would be served by accepting Shull's additional comments since it provides us with a more complete record.

⁵ The license of Station WZKS-FM was modified to specify operation on Channel 252C1 by *Report and Order*, MM Docket 87-607, 3 FCC Rcd 5547 (1988).

⁶ For purposes of FM allotments, white area is an area which receives no fulltime aural service and gray area is one which receives only one fulltime aural service.

⁷ Seggi's Flagler Beach proposal was dismissed at his request by letter dated December 10, 1987. Without such an expression of interest, the Commission will not propose the allotment of an FM channel.

⁸ The figures for Lowndes County (population 67,972) do not include Valdosta (population 37,596) since the community is already within the existing Class C1 service contour.

⁹ In Alachua County (population 151,348), the city of Gainesville (population 81,371) is not covered within the existing Class C1 service contour nor could it be covered even if Station WQHL were to operate with maximum Class C facilities.

¹⁰ Because of its population density, we have dealt with the city of Jacksonville (population 540,920) separately.

¹¹ The coordinates for this allotment are North Latitude 30-00-00 and West Longitude 81-21-35.