

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-267; FCC 00-291]

Implementation of the AM Expanded Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; on remand from U.S. Court of Appeals for D.C. Circuit; record supplemented.

SUMMARY: After undertaking a hypothetical computer re-analysis of the allotment plan for the migration of AM radio stations to the expanded band, *i.e.*, 1605-1705 kHz, deleting protections for federal Traveler Information Service ("TIS"), the Federal Communications Commission ("FCC") concluded that WGNV(AM), Newburgh, New York, would not have been granted an AM expanded band allotment even if TIS station protection was deleted. This action was taken in response to WGNV's argument that it would have been granted an expanded band allotment if the expanded band plan did not include TIS protections. The FCC also declined to consider WGNV's objections to several fundamental aspects of the allotment methodology which were resolved earlier in this proceeding but about which WGNV did not object previously.

DATES: Effective August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418-2789.

SUPPLEMENTARY INFORMATION: In Implementation of the AM Expanded Band Allotment Plan, MM Bureau Docket No. 87-267, FCC 00-291, adopted August 3, 2000, released August 10, 2000 ("Memorandum Opinion and Order"), on remand from the U.S. Court of Appeals for the District of Columbia Circuit (the "Court"), the Federal Communications Commission concluded that a computer reanalysis performed by the FCC staff establishes that Station WGNV(AM), Newburgh, New York, would not receive an AM expanded band allotment even if the FCC were to adopt the technical change to the allotment methodology that the licensee of WGNV(AM) advocated. On June 25, 1997, Sunrise Broadcasting of

New York, Inc., sought review by the Court of the FCC's March 17, 1997 Order in Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, 12 FCC Rcd 3361, 62 FR 23176 (Apr. 29, 1997) ("Order"), which had denied, *inter alia*, Sunrise's Petition for Reconsideration of Non-Inclusion in Expanded AM Band Allotment Plan. Note: 62 FR 23176 inadvertently omitted the Final Regulatory Flexibility Analysis for the Order, FCC 97-68; that analysis is located at 62 FR 28369 (May 23, 1997). Also on March 17, 1997, the Mass Media Bureau issued a Public Notice, Mass Media Bureau Announces Revised AM Expanded Band Allotment Plan and Filing Window for Eligible Stations, 12 FCC Rcd 3185 (MM Bureau 1997) ("Third Allotment Plan") which did not include an expanded band allotment for WGNV. Sunrise argued to the Court of Appeals that the staff's granting certain Traveler Information Service ("TIS") stations co-primary status (thus according them some interference protection) was an unexplained change of agency policy and resulted in WGNV being precluded from obtaining an expanded band allotment. The Mass Media Bureau responded to the Court with a computer analysis that eliminated TIS Station consideration but still resulted in WGNV not having an allotment. After the Court remanded the matter to the FCC on this point, on March 31, 1998, the Mass Media Bureau supplemented the record with the computer re-analysis. On October 19, 1998, Sunrise conceded this point, but in Comments filed with the FCC it sought consideration, for the first time, of issues not previously raised in this proceeding. Specifically, Sunrise objected to the 1995 FCC decision to change the co-channel distance separation requirements for AM expanded band stations from 400 to 800 kilometers (see Reconsideration of Implementation of the AM Expanded Band Allotment Plan, 10 FCC Rcd 12143, 12149 (1995)), and to the calculation of the improvement factors for two of the 710 potential expanded band stations listed in a 1996 Mass Media Bureau Public Notice (see Public Notice, Mass Media Bureau Announces Revised Experimental AM Broadcast Band Implementation Factors and Allotment Plan, 11 FCC Rcd 11419 (MMB 1996). In the Memorandum Opinion and Order, the FCC denied as untimely Sunrise's request to reexamine any aspects of the AM expanded band proceeding other than those relating directly to the interference protection afforded TIS stations, and ordered that

the Mass Media Bureau's computer re-analysis be made a part of the record in this proceeding. The full text of the Memorandum Opinion and Order issued in Implementation of the AM Expanded Band Allotment Plan, FCC 00-291, adopted August 3, 2000 and released on August 10, 2000 is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12th Street, SW, Washington, D.C. The complete text of this MO&O may also be purchased from the FCC's copy contractor, International Transcription Services (202) 857-3800, 1231 20th Street, NW, Washington, D.C.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2148; MM Docket No. 99-75; RM-9446]

Radio Broadcasting Services; Grants, Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don Davis, former licensee of Station KQEO(FM), now Station KXXQ(FM), Grants, New Mexico, reallots Channel 264A from Grants to Milan, New Mexico as the community's second local aural transmission service. See 64 FR 14423 (March 25, 1999). Channel 264A at Grants was downgraded from 264C2 by one-step application (File No. BMPH-19960226IB) granted on June 13, 1996. Channel 264A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's site 5.7 kilometers (3.6 miles) south, at coordinates 35-07-09 North Latitude and 107-54-08 West Longitude.

DATES: Effective November 6, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.