

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 92-291
FM Broadcast Stations.)	RM-8133
(Cambridge and St. Michaels, Maryland))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2002

Released: October 18, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition to Dismiss filed by CWA Broadcasting, Inc. (“CWA Broadcasting”), licensee of Station WINX-FM (formerly WFBR), Channel 232A, St. Michaels, Maryland, requesting that its original Petition for Rule Making in this proceeding be dismissed. WDAC Radio Company (“WDAC Radio”), licensee of Station WDAC, 233B, Lancaster, Pennsylvania, filed a Petition to Dismiss or Deny and Opposition to Petition to Dismiss. For the reasons discussed below, we are denying the relief requested in the CWA Broadcasting Petition to Dismiss.

Background

2. At the request of CWA Broadcasting, then permittee of Station WFBR, Channel 232A, Cambridge, Maryland, the Commission reallocated Channel 232A from Cambridge to St. Michaels, Maryland, and modified the Station WFBR construction permit to specify St. Michaels as the community of license.¹ In that action, the Commission noted that the reallocation would provide St. Michaels with a first local service while Cambridge would continue to receive local service from Stations WCEM and WCEM-FM. As such, this reallocation resulted in a preferential arrangement of allotments as required by *Modification of FM and TV Authorizations to Specify a New Community of License*.²

3. On April 16, 1997, CWA Broadcasting filed a Petition for Clarification directed to the Commission action reallocating Channel 232A to St. Michaels and modifying its construction permit. In its Petition for Clarification, CWA Broadcasting stated that it filed its original Petition for Rule Making to reallocate Channel 232A to St. Michaels due to its inability to secure local zoning approval for the construction of a tower. Subsequently, we granted a construction permit to permit Station WFBR to locate its transmitter on an existing tower at a location that would permit service to both Cambridge and St. Michaels.³ CWA Broadcasting stated that it brought “these matters to the attention of the Commission in the event that they would cause the Commission to modify its decision.” CWA Broadcasting went on

¹ *Cambridge and St. Michaels, Maryland*, 12 FCC Rcd 3504 (1997).

² 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

³ File No. BMPH-960701IB.

to state that it “is desirous of having WFBR licensed to St. Michaels, but it is willing as well to be licensed to Cambridge.” The Petition for Clarification did not request reconsideration of the Commission action or provide any basis to revisit that decision. Moreover, it did not request or require any response from the Commission. It continues to be our view that a first local service to St. Michaels results in a preferential arrangement of allotments and is in the public interest.

4. On July 10, 2002, CWA Broadcasting filed a Petition to Dismiss requesting that its original Petition for Rule Making in this proceeding be dismissed. The underlying reason for this filing is that it wishes that Station WINX-FM (formerly WFBR) remain licensed to Cambridge in order to permit favorable action on its pending application to upgrade Station WINX-FM to a Class B1 facility.⁴ At the proposed site, Channel 232B1 would not provide a 70 dBu signal to St. Michaels as required by Section 73.315(a) of the Commission’s Rules.

5. In its Petition to Dismiss, CWA Broadcasting contends that its earlier Petition for Clarification constituted a petition for reconsideration under Section 1.106 of the Commission’s Rules. In support of this argument, CWA Broadcasting notes that it never filed the requisite application to implement the reallocation of Channel 232A to St. Michaels. As such, CWA Broadcasting argues that this proceeding is not final and its original Petition for Rule Making is subject to dismissal. We disagree. In its Petition for Clarification, CWA Broadcasting did not suggest factual or legal error, contest the action reallocating Channel 232A to St. Michaels or request that the action be set aside due to changed circumstances. In fact, CWA Broadcasting stated that it “is desirous of having WFBR licensed to St. Michaels.” The fact that CWA Broadcasting did not file the requisite construction permit application to implement that action does not affect the underlying Commission action reallocating Channel 232A to St. Michaels and modifying the station authorization to specify St. Michaels as its community of license. The required filing of a construction permit application in this instance was merely a procedure to permit CWA Broadcasting to operate with specified facilities in accordance with the Commission action reallocating a channel and modifying an authorization. This procedure does not affect the finality of the Commission action. At this juncture, the appropriate procedure would be for CWA Broadcasting to file a petition for rule making proposing the reallocation of Channel 232A back to Cambridge.

6. Accordingly, IT IS ORDERED, That the relief requested in the aforementioned Petition to Dismiss filed by CWA Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁴ File No. BPH-20020718ABE. WDAC Radio has also objected to the grant of this application. Its arguments will be considered in our disposition of the application.