

**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. 96-100
FM Broadcast Stations.)	RM-9963
(Amherst and Lynchburg, Virginia))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: December 31, 2003

Released: January 16, 2004

By the Assistant Chief, Audio Division:

1. At the request of Greater Lynchburg Stereo Broadcasters (“Greater Lynchburg”), the Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding proposing the allotment of Channel 294A to Amherst, Virginia, and Channel 229A to Lynchburg, Virginia.¹ Greater Lynchburg and Southern Entertainment Corporation (“Southern Entertainment”) filed Comments. Greater Lynchburg filed Reply Comments. For the reasons discussed below, we are allotting Channel 229A to Lynchburg, Virginia, and denying the proposal for a Channel 294A allotment at Amherst, Virginia.

2. In response to the *Notice*, Southern Entertainment, permittee of Station WKVE (formerly WPXX), Channel 294A, Semora, North Carolina, filed Comments objecting to the proposed Channel 294A allotment at Amherst. In its Comments, Southern Entertainment notes that it filed a one-step application to upgrade its allotment to Channel 294C2 on March 7, 1996 (File No. BMPH-960307IC). In view of the fact that Greater Lynchburg did not file its Petition for Rule Making proposing the Channel 294A allotment until March 13, 1996, the filing of the one-step upgrade application precludes consideration of a subsequent petition for rule making under Section 73.208(a)(3) of the Rules.² In its Reply Comments, Greater Lynchburg contends that the Station WKVE one-step application was unacceptable for filing and therefore should not preclude consideration of its Petition for Rule Making. Subsequently, on December 23, 1997, we granted the Station WKVE one-step Class C2 upgrade application. On October 30, 2003, the Commission denied an Application for Review directed against the grant of that application.³ That action is now final. The proposed Channel 294A allotment at Amherst is short-spaced to the Channel 294C2 allotment now at Semora and is therefore denied. In view of the denial of the competing proposal in this proceeding, we are allotting Channel 229A to Lynchburg, Virginia, as a fifth local FM service.⁴

¹ *Amherst and Lynchburg, Virginia*, 11 FCC Rcd 5247 (MMB 1996).

² 47 C.F.R. § 73.208(a)(3). See also *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992).

³ *Semora, North Carolina*, 18 FCC Rcd 23411 (2003).

⁴ The reference coordinates for the Channel 229A allotment at Lynchburg, Virginia, are 37-21-33 and 79-09-37.

3. Accordingly, pursuant to authority contained in Sections 4 (I), 5 ©(1), 303 (g) and ® 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 1, 2004, the Table of FM Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Lynchburg, Virginia	229A, 250C3, 261C3, 269C3, 290A

4. A filing window for the Channel 229A allotment at Lynchburg, Virginia, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

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

6. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau