

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-9
Table of Allotments,)	RM-9216
FM Broadcast Stations.)	MM Docket No. 98-13
(Pleasanton, Topeka, Iola, and)	RM-9212
Emporia, Kansas))	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 11, 2001

Released: July 20, 2001

By the Chief, Allocations Branch:

1. The Commission has before it notices of proposed rulemaking in two separate dockets. First, in response to a petition for rulemaking petition (RM-9212) filed by the Shawnee Broadcasting Corporation (“Shawnee”), the Commission issued a *Notice of Proposed Rulemaking and Order to Show Cause* in MM Docket No. 98-13, 13 FCC Rcd 2463 (1998) (“*Topeka Notice*”). Shawnee proposes the upgrade of Station KWIC(FM), Topeka, Kansas, by substituting Channel 257C3 (99.3 MHz) for Channel 257A and modifying KWIC(FM)’s license to specify operation on Channel 257C3. In order to accommodate the upgrade, the *Topeka Notice* also proposes a) the substitution of Channel 268A (101.5 MHz) for Channel 257A at Station KIKS(FM), Iola, Kansas, b) the substitution of Channel 241A (96.1 MHz) for Channel 258A (99.5 MHz) at Station KRWV(FM), Emporia, Kansas, and c) the modification of each of the respective stations’ licensees accordingly. The *Topeka Notice* also ordered KIKS(FM)’s licensee, Iola Broadcasting, Inc., and KRWV(FM)’s licensee, C&C Consulting, Inc. (“C&C”), to show cause why the respective substitutions should not be made. A second petition for rulemaking submitted by the City of Pleasanton, Kansas (RM-9216) was filed a day after RM-9212, and resulted in the issuance of the *Notice of Proposed Rulemaking* in MM Docket 98-9, 13 FCC Rcd 2153 (1998) (“*Pleasanton Notice*”). The *Pleasanton Notice* proposes the allotment of Channel 268C3 to Pleasanton as that community’s first local aural transmission service. As filed, these two dockets are mutually exclusive and we will evaluate them both in the instant proceeding. As proposed in the respective *Notices*, we will upgrade KWIC(FM) to specify operation on Channel 257C3 and allot a Class C3 channel to Pleasanton.

2. Shawnee filed comments to the *Topeka Notice* in MM Docket 98-13, incorporating by reference the attributes cited in its rulemaking proposal, namely that an upgraded KWIC(FM) would be able to double its service area, and KIKS(FM) and KRWV(FM), operating on the proposed channel substitutions, would be able to serve increased numbers of listeners. Shawnee also affirmed its expression of interest in applying for and constructing its requested upgrade of KWIC(FM)’s facilities. In this regard, Innovative Broadcasting Corporation (“Innovative”), licensee of Station KSEK(FM),

Channel 256A (99.1 MHz), Girard, Kansas, filed comments in support of changing the operating frequency of KIKS(FM) from 257A to Channel 268A. Innovative contends such change would remove its station's adjacent channel conflict with KIKS(FM) and permit KSEK(FM) to increase its effective radiated power ("ERP") to 6 kilowatts. Iola Broadcasting submitted comments stating that it has no objections to the proposed channel changes and that agreement with Shawnee can be reached on reasonable reimbursement of the out-of-pocket expenses incurred by KIKS(FM) in changing its frequency. C&C did not respond to the order to show cause.¹

3. As to MM Docket 98-9, the City of Pleasanton states that its community is incorporated with a 1990 U.S. Census population of 1231 persons. It notes that the community has a mayor, city council, and its own police and fire departments. The City of Pleasanton states that other municipal services including a park and a library are provided to its residents by the local government. It notes that the Pleasanton Chamber of Commerce promotes local economic development. The City of Pleasanton filed a letter in comment in response to the *Pleasanton Notice* stating its intention to apply for Channel 268C3, if allotted, and to construct a new FM broadcast station there. It further states that its engineering consultant estimates that such a station would serve an estimated 33,998 persons.

4. Shawnee filed reply comments in MM Dockets 98-9 and 98-13 and noted that neither the *Topeka* nor the *Pleasanton Notices* recognized that Channel 268C3 at Pleasanton is mutually exclusive with Shawnee's rulemaking petition. In its petition, in order to accommodate its proposal to upgrade KWIC(FM) on Channel 257C3, Shawnee had proposed the substitution of Channel 268A for Channel 257A at Iola. Shawnee maintains that it should be accorded cut-off protection, and, at best, the City of Pleasanton's proposal should have been treated as a counterproposal, because its rulemaking petition was filed the day before that of the City of Pleasanton. In any event, Shawnee states that the two conflicting dockets can be favorably resolved. Shawnee reports that its consultant found a replacement channel for Channel 268C3 at Pleasanton, namely Channel 229C3 (93.7 MHz), and that it complies with all of the Commission's minimum spacing and city grade coverage requirements. Shawnee notes that the Commission favors, where possible, the allotment of channels to the maximum number of communities vying for a new or newly upgraded channel, citing *Archilla-Marcocci Spanish Radio Co.*, 101 FCC 2d 522 (Rev. Bd. 1985), *rev. denied*, 104 FCC 2d 405 (Comm. 1986). Shawnee also notes that allotment of Channel 229C3 would eliminate the mutual exclusivity between the two dockets, would satisfy the request by the City of Pleasanton for a first local service, and would permit service area improvements for stations in four other communities (including Girard, Kansas).² Shawnee also reaffirms its commitment to reimburse Stations KIKS(FM) and KRWV(FM) in

¹ C&C is therefore deemed to have consented to the substitution of Channel 241A for Channel 258A at KRWV(FM) at Emporia.

² Shawnee filed a Motion for Decision as to both dockets urging that the Commission act, particularly in light of the proposed resolution of the mutual exclusivity and the lack of opposition. The City of Pleasanton and Innovative separately filed statements in support of Shawnee's Motion. It will be rendered moot by the decision herein.

accordance with *Circleville, Ohio*, 8 FCC 2d 159 (1967) for the reasonable out-of-pocket expenses for the respective frequency changes to accommodate the proposed upgrade of KWIC(FM).

5. Innovative in its reply states that it has no objection to the allotment of a Class C3 channel to Pleasanton and supports Shawnee's suggestions of channels other than Channel 268C3 to Pleasanton, which would permit an increase in ERP to 6 kilowatts at KSEK(FM). Moreover, Innovative contends that the public interest would be best served by the resulting global solution.

6. We find that the proposed resolution of mutual exclusivity between the Topeka and Pleasanton proposals is acceptable and promotes the public interest. The resolution satisfies the petitioners in each proceeding, and, more important, gives Pleasanton the opportunity to have its first local transmission service. It also provides for the upgrade of KWIC(FM) and service area enhancements of other stations due to the changing of frequencies to accommodate that upgrade. We will therefore grant the allotment of Channel 257C3 at Topeka and the accommodating allotments of Channel 268A at Iola and of Channel 241A at Emporia in MM Docket 98-13, and will grant a new allotment of Channel 229C3 at Pleasanton in MM Docket 98-9.

7. Channel 257C3 can be allotted to Topeka at Shawnee's requested site, consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules.³ Channel 268A can be allotted to Iola at KIKS(FM) and Channel 241A can be allotted to Emporia at KRWV(FM), both at their current transmitter sites.⁴ Channel 229C3 can be allotted to Pleasanton at a site restricted to 22.1 kilometers (13.7 miles) west of the community at 38-13-49 North Latitude and 94-57-14 West Longitude. The allotment of the latter three channels also complies with the Rules.

8. Accordingly, pursuant to 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 September 4, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

³ The coordinates for Channel 257C3 at Topeka are 39-01-12 NL and 95-41-25 WL, 3.5 km removed KWIC(FM)'s current transmitter site.

⁴ The coordinates for Channel 268A at Iola, KIKS(FM), are 37-54-04 NL and 95-24-04 WL. The coordinates for Channel 241A at Emporia, KRWV(FM), are 38-24-21 NL and 96-14-13 WL

<u>City</u>	<u>Channel No.</u>
Emporia, Kansas	241A, 269A, 285A
Iola, Kansas	268A
Pleasanton, Kansas	229C3
Topeka, Kansas	247C, 257C3, 262C, 295C, 299C

9. The window period for filing applications for Channel 229C3 at Pleasanton will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

10. IT IS FURTHER ORDERED, That the Motion for Decision filed by Shawnee Broadcasting Corporation in MM Docket Nos. 98-9 and 98-13 is DISMISSED AS MOOT.

11. IT IS FURTHER ORDERED That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of the *Order* to the following:

Harold K McCombs, Jr. Dickstein, Shapiro, Morin, & Oshinsky LLP Washington, DC 20037-1526 [Counsel to petitioner for RM-9212]	Gary E. Thompson Attorney at Law P.O. Box 184 Mound City, KS 66056 [Counsel to petitioner for RM-9216]
C&C Consulting, Inc. 713 East Clark Emporia, KS 41541 [(Licensee of Station KRWV(FM))]	Eugene T. Smith 715 G Street, S.E. Washington, DC 20003 [Counsel for Iola Broadcsting, Inc., Licensee of Station KIKS(FM)]

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Shawnee Broadcasting Corporation for Station KWIC(FM), Topeka, Kansas, IS MODIFIED to specify operation on Channel 257C3 at Topeka, Kansas, 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), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Iola Broadcasting, Inc. for Station KIKS(FM), Iola, Kansas, IS MODIFIED to specify operation on Channel 268A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH19970203KA except for the channel as specified above. Any changes, except for those specified, require prior authorization prior pursuant to an application for construction permit. (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH19970203KA, except for the channel as specified above, and license application (Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of the license of C&C Consulting, Inc. for Station KRWV(FM), Emporia, Kansas IS MODIFIED to specify operation on Channel 241A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH19980501KC, except for the channel as specified above. Any changes, except for those specified, require prior authorization prior pursuant to an application for construction permit. (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED that the transmission facilities comply in all respects with License BLH19980501KC, except for the channel as specified above, and license application (Form 302) is filed within 10 days of commencement of program tests.

15. Pursuant to Commission Rule Section 1.1104(1)(k) and 2(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, of Shawnee Broadcasting Corporation, licensee of Station KWIC(FM), Topeka, Kansas, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the upgrade of its station from Channel 257A to Channel 257C3 at Topeka, Kansas.

16. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

17. For further information concerning the above, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau