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

MM Docket No. 91-352

In the Matter of

Amendment of Section 73.202(b), RM-7866
Table of Allotments,
FM Broadcast Stations.
(Ava, Branson and
Mountain Grove, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 3, 1995; Released: November 28, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause,* 6 FCC Rcd 7214 (1991), issued in response to a petition filed by Turtle Broadcasting Co. of Branson ("Turtle"). The *Notice* proposed the substitution of FM Channel 292C2 for Channel 292C3 at Branson, Missouri, and modification of the construction permit for Station KRZK(FM) to specify operation on Channel 292C2. In addition, the *Notice* proposed the substitution of Channel 223A for Channel 293A at Mountain Grove, Missouri, and the modification of the license of Communications Works, Inc. ("Communications Works") for Station KCMG-FM, as well as the substitution of Channel 221A for Channel 222A at Ava, Missouri, and the modification of the license of Corum Industries, Inc. ("Corum") for Station KKOZ-FM, in order to accommodate the Branson proposal. An *Order to Show Cause* was issued to Stations KCMG-FM and KKOZ-FM, directing the licensees to demonstrate why they should not be modified to specify operation on Channel 223A and Channel 221A, respectively. Turtle and Corum filed comments and reply comments. Communications Works filed reply comments.[1]

2. In response to the *Notice,* Turtle filed supporting comments reaffirming its intention to construct the requested modified facilities. Petitioner indicates that Branson is deserving of additional broadcast service as it is a growing resort area. Petitioner has stated its willingness to reimburse the licensees of Stations KCMG-FM and KKOZ-FM for the costs involved in changing channels to accommodate the channel substitution at Branson.

3. Corum filed comments opposing the substitution at Ava, Missouri. According to Corum, Station KKOZ-FM is licensed as a six kilowatt facility and believes that the close proximity to Station KCMG-FM, Mountain Grove, would create interference problems. Corum argues that Channel 221A is not available for use at Ava because Station KLWT-FM, Lebanon, Missouri, still operates on Channel 221A even though the station has been ordered to Channel 300C2. Corum questions the "fairness" of placing Stations KKOZ-FM and KCMG-FM next to each other on the radio dial (221A and 223A) while Station KRZK-FM enjoys a position far removed from its competitiors (292C2).

4. Turtle, in reply comments, continues to support its proposal for Branson and restates that it will reimburse both the licensees of KKOZ-FM, Ava, Missouri, and Station KCMG-FM, Mountain Grove, Missouri, for their reasonable expenses incurred in changing frequencies. Turtle fully accepts its responsibility to reimburse both licensees using the criteria the Commission set forth in *Circleville, Ohio,* 8 FCC 2d 159 (1967). Turtle maintains that *Circleville* does not mandate payment for lost revenue. In response to Corum's assertions that Channel 221A is not available for use at Ava, Turtle states that Station KLWT-FM, Lebanon, Missouri, has a construction permit (BPH-900122IG) for Channel 300C2. Further, claims Turtle, should the Lebanon station decide to remain a Class A station, it would be downgraded to Channel 300A as the Table of Allotments has been amended removing Channel 221A from Lebanon, which clears the way for Channel 221A to be allotted to Ava as a six kilowatt channel. Turtle believes that modification of its construction permit will increase the number of broadcast signals available to the public, thus promoting the efficient use of the spectrum and providing significant public interest benefits. It is Turtle's contention that there will be no loss of service at Ava or Mountain Grove and that the proposed channels will be allotted as six kilowatt channels, thereby providing the possibility of expanded service to those communities.

5. Corum filed reply comments continuing to object to the proposed substitution at Ava. Corum points out that it has only operated at its current frequency since April 11, 1991, and Station KCMG-FM, Mountain Grove, has previously been ordered to change frequencies as well. Corum argues that listeners stand to be confused by constant channel changes, which cause the stations to forfeit listeners and revenue. Although licensed to a community, Corum states that stations the size of KKOZ-FM and KCMG-FM serve the county or counties around them as well and the revenue from these surrounding areas often provide the margin of survival for small stations. Corum requests that the Commission allow Stations KKOZ-FM and KCMG-FM to remain on their current channels and deny the upgrade at Branson, or to grant the Branson station an upgrade on a frequency that will not impact the stations at Ava and Mountain Grove.

6. Communications Works, d/b/a Radio Stations KCMG AM and FM, objects to a frequency change at Mountain Grove. Communications Works states that it was required to change its channel in 1987 to accommodate an upgrade for Station KLDN, Eldon, Missouri, and that the change had a "devastating financial impact" on its station. It fears that this anticipated move could cause the station to shut down. Communications Works believes that Turtle's petition is inadequate, as filed, and that the proposal should be

[1] In addition, late filed comments were submitted by Lake Broadcasting, Inc. ("Lake"), and Turtle filed a motion to strike. We do not believe that sufficient reasons have been given for accepting Lake's late filed pleading because the alleged conflict between the use of Channel 221A at Ava in this proceeding and its possible use at Waynesville in Docket 89-120 was ascertainable prior to the reply comment deadline in the instant proceeding, Docket 91-352.

resubmitted with an alternate plan which does not require Ava and Mountain Grove to change channels. However, should the substitution be granted at Mountain Grove, Communications Works requests reimbursement for all material and labor costs and for lost revenue during the transition time.

7. After careful consideration of the proposal and pleadings before us, we believe that the public interest would be served by the substitution of Channel 292C2 for Channel 292C3 at Branson, Missouri, and modification of the construction permit for Station KRZK(FM) to specify operation on the higher class channel. In order to accomplish the substitution at Branson, Channel 221A must be substituted for Channel 222A, Ava, Missouri, and Channel 223A must be substituted for Channel 293A at Mountain Grove, Missouri, and the licenses for Stations KKOZ-FM and KCMG-FM modified accordingly. We find that Corum has not raised a substantial and material question of fact which would require a hearing on the proposed modification. As the Commission has held on numerous occasions, the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provisions of new or expanded service at another community. *See, e.g., Marietta, Ohio, and Ravenswood, WV,* 2 FCC Rcd 4681 (1987) and *Albany, NY et al.,* 2 FCC Rcd 4300 (1987). Because a channel change may be disruptive to both the stations operation and its audience, we will order such a change only where we determine that the public interest benefits derived from the change outweigh the benefit which comes from retaining the channel in the community. In this case, modification of the licenses for Stations KKOZ-FM and KCMG-FM enables Station KRZK(FM) at Branson, Missouri, to expand its coverage area. We further find no merit to Corum's contention that Turtle seeks to remove Station KCGM-FM from Channel 293A and place it on Channel 223A in order to remove competition and, at the same time, place its closest competitors next to each other on the dial to create confusion. Our engineering analysis indicates there are no other channels available for allotment at Ava or Mountain Grove and Channel 292C2 cannot be allotted to Branson in compliance with the Commission's minimum distance separation requirements unless Channel 293A is removed from Mountain Grove and Channel 221A is removed from Ava. Finally, Turtle has indicated it intends to reimburse Stations KKOZ-FM and KCMG-FM for reasonable costs incurred in changing channels. We note that the Commission will not consider a licensee to be in violation of the terms of its license if it continues to operate on an existing channel for a reasonable time following the effective date in a modification. Indeed, it is not necessary for the modification to take place until the use of the existing channel actually prevents a newly authorized station from inaugurating service. *See Albany et al., NY,* 2 FCC Rcd 3327 (1987). Therefore, affected stations are afforded a significant lead time between the release of a *Report and Order* modifying its license or permit and the actual change in its channel. This lead time, coupled with promotional efforts, should provide an additional safeguard with respect to any potential audience loss.

8. Channel 292C2 can be allotted to Branson, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules at petitioner's specified site.[2] As stated above, to accommodate the upgrade at Branson, we shall substitute Channel 221A for Channel 222A at Ava and Channel 223A for Channel 293A at Mountain Grove.[3] The substitutions at Ava and Mountain Grove can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current sites for Station KKOZ-FM and KCMG-FM.[4] In accordance with Section 1.420(g) of the Commission's Rules, we shall modify the construction permit for Station KRZK(FM), Branson, to specify operation on Channel 292C2.

9. 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 **January 12, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

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[2] The coordinates for Channel 292C2 at Branson are 36-43-00 and 93-05-00.

[3] We recognize that the reference coordinates for Channel 221A at Ava (36-55-48 and 92-39-19) conflict with Lake Broadcasting's suggested use of Channel 221A as an alternative channel to be substituted at Waynesville, MO for Channel 272A in connection with its pending petition for reconsideration in MM Docket No. 89-120. In that docket, Lake filed a counterproposal to upgrade its Station KBMX(FM), Eldon, Missouri, from Channel 270A to Channel 270C1. This in turn required the substitution of Channel 274A for Channel 272A at Waynesville and the modification of Station KJPW(FM)'s license accordingly, as well as a related channel substitution at Cuba, MO. In reply comments to the counterproposals in MM Docket 89-120, Lake suggested that Channel 221A could be substituted for Channel 272A at Waynesville to eliminate a conflict with another counterproposal to allot Channel 274A to Lake Ozark, Missouri. The *Report and Order* in Docket 89-120 allotted Channel 274A to Lake Ozark and also determined that Channel 221A at Waynesville could not be substituted because it was unavailable. Lake, in its pending petition for reconsideration, challenges the unavailability of Channel 221A at Waynesville. Although the Eldon proceeding is being held in abeyance because Lake's licenses and construction permits have been designated for revocation hearing due to the felony convictions of Michael Rice, its President, Treasurer and 67.5% shareholder (*see Order to Show Cause and Notice of Apparent Liability* in MM Docket 95-154, FCC 95-410, released October 10, 1995), we see no reason to defer upgrading the Branson station and substituting Channel 221A for Channel 222A at Ava because in Docket 89-120 Lake has stated its willingness to accept a Class C2 upgrade at Eldon which requires no channel substitution at Waynesville or any other community. However, the processing of the license application for Channel 221A at Ava may be deferred pending the outcome of MM Docket 89-120.

[4] The coordinates for Channel 221A at Ava are 36-55-48 and 92-39-19. The coordinates for Channel 223A at Mountain Grove are 37-08-07 and 92-14-59. Previously, Channel 221A, Ava, was short spaced to Station KCLQ (formerly KLWT-FM), Channel 221A, Lebanon, Missouri. The license for Station KCLQ was modified to specify operation on Channel 300C2 in MM docket 86-278. *See* 2 FCC Rcd 6786 (1987). Station KCLQ is now licensed on Channel 300C2 (BLH-930315KB). We also note that the reference coordinates for Channel 221A at Ava are short-spaced to an application (BPED-950627MF) for a new noncommercial FM station on Channel 220A at Marshfield, MO. However, pursuant to Section 73.208(a)(3) of the Commission's Rules, the instant rulemaking petition is not required to protect the subsequently filed application for Marshfield.

Community	Channel No.
Ava, Missouri	221A
Branson, Missouri	292C2
Mountain Grove, Missouri	223A

10. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KRZK(FM), Branson, Missouri, IS MODIFIED to specify operation on Channel 292C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order,* the permittee shall file with the Commission a minor change application for 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.

(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.

11. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KKOZ-FM, Ava, Missouri, IS MODIFIED, to specify operation on Channel 221A, and the license of Station KCMG-FM, Mountain Grove, Missouri, IS MODIFIED, to specify operation on Channel 223A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license BLH-900518KI, Ava, and in license BMLH-890327KC, Mountain Grove, except for the channel as specified above. Any changes, except those specified require prior authorization 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 BLH-900518KI, Ava, and BMLH-890327KC, Mountain Grove, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Communications Works, Inc.
Station KCMG-FM
P.O. Box 804
Mountain Grove,
Missouri 65711

Corum Industries, Inc.
Station KKOZ-FM
P.O. Box 386
Ava, Missouri 65608

Howard L. Braun
Jerold L. Jacobs
Rosenman & Colin
1300 19th Street, N.W. Suite 200
Washington, DC 20036
(Counsel for Lake Broadcasting

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Turtle Broadcasting Co. of Branson, permittee of Station KRZK(FM) is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

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

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

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