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

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FCC Mail Room

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-143
Table of Allotments,	)	RM-I 1221
FM Broadcast Stations.	)	RM-I1286
(Romney and Wardensville, West Virginia)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 9,2007 **Released: May 11,2007**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division issued a *Notice* of ***Proposed Rulemaking ("Notice")*** in response to a Petition for Rule Making filed by Cornwell & Ailes, Inc. ("C&A").[1] The ***Notice*** proposed the allotment of Channel 239A as a third local service at Romney, West Virginia, a city of 1,940 persons. C&A filed comments supporting the allotment of Channel 239A at Romney, and reaffirmed its intention to apply for the channel if it is allotted and, if authorized, to build and operate a station on that channel. Hardy County Broadcast Associates ("Hardy") submitted a timely counterproposal requesting that the Commission allot Channel 239A as a first local service at Wardensville, West Virginia, **a** town of 246 persons. For the reasons set forth below, we allot Channel 239A at Wardensville, West Virginia, as requested in Hardy's counterproposal, and we dismiss the C&A proposal.

2. Background. Hardy's proposed allotment of Channel 239A at Wardensville is mutually-exclusive with the ***Notice's*** proposed allotment of Channel 239A at Romney, West Virginia. Hardy states that Wardensville has its own government, with a mayor, a town recorder, and a town counsel. Hardy further provides evidence that Wardensville has its own post office and zip code (26851), that it provides fire, volunteer rescue, and other services to its residents, and that the town is home to several churches, medical facilities, and numerous businesses, including several which contain "Wardensville" in their names. Hardy filed reply comments, reiterating the statements contained in its counterproposal.

3. C&A submitted a motion requesting that we accept its late-filed comments in response to Hardy's counterproposal.* C&A argues that, because the public notice soliciting comments on Hardy's counterproposal was issued by the Commission's Consumer and Governmental Affairs Bureau rather than the Media Bureau, C&A's failure to file its Comments by the deadline is "understandable and excusable." In the comments accompanying C&A's motion, C&A argues that Wardensville is a "quiet village" and therefore does not warrant a preference as a first local service. Moreover, C&A states that the Commission

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[1] ***Roma, Texas, and Romney, West Virginia.*** Notice of Proposed Rule Making. 20 FCC Rcd 6302 (MB 2005) *("Norice").*

[2] Pursuant to the Public Notice. Report No. 2734, released October 20, 2005, comments on Hardy's counterproposal were due no later than 15 days following release of the Public Notice, ***i.e.***, by November 4, 2005. C&A's "Motion to Accept Late-Filed Comments" and accompanying "Comments on Counterproposal" were incorrectly addressed io the Media Bureau, where they were received on November 30, 2005. The filings were received by the Office of the Secretary on June ***2,*** *2006.* Under well-established procedures, these filings will he treated **as** having been tiled on June 2,2006.

should prefer the proposed allotment at Romney over an allotment at Wardensville because the Romney allotment would provide an additional service to more persons than the Wardensville allotment.

4. In response, Hardy moved to strike C&A's reply comments in opposition to Hardy's counterproposal.[3] Hardy arguer that C&A failed to use reasonable diligence in noting the release of the Public Notice soliciting comments on Hardy's counterproposal, and urges that C&A's comments be dismissed for failure to comply with Section 1.415 of the Commission's rules. Moreover, Hardy disputes C&A's characterization of Wardensville as a "quiet village." Hardy states that Wardensville has the indicia **of** a separate and distinct community, and further points out that the circumstances of this case do not warrant application of the "quiet village" exception to the first local service preference, which typically has been limited to comparative situations in which parties proposed stations that would cover substantially the same area and population.

5. Discussion. Initially, we find that C&A has not shown good cause for waiver of Section 1.415 of the Commission's rules. We have stated previously that "[a]cceptance of late-filed comments supporting an allotment proposal is limited to situations where there is no opposition to the proposal and where there would be no adverse impact on another pending proposal."[4] Hardy served a copy of its counterproposal on C&A and, thus, C&A had actual notice **of** this proposal. Moreover, we find that C&A's explanation for its late filing does not justify a waiver of Section 1.415 of the Commission's rules. As Hardy points out in its motion to strike, the Commission has for years released public notices accepting counterproposals in allotment rulemakings in the manner used in this case. Finally, C&A errs in stating that "[a]ll pleadings in this proceeding are addressed to the Media Bureau;" in fact, the *Notice* clearly specified that "[a]ll filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary."' For all of the reasons discussed, we shall grant Hardy's motion to strike C&A's late-filed reply comments.

6. In choosing between competing allotment proposals, we compare the proposed arrangements of allotments using the FM allotment priorities **set** forth in ***Revision*** of ***FM Assignment Policies und Procedures.6*** C&A and Hardy both propose allotments to areas that are well-served with five or more reception services. Accordingly, priorities one and two are inapplicable. Allotment of Channel 239A at Romney would satisfy only the fourth allotment priority, "other public interest matters," whereas allotment of Channel 239A at Wardensville would satisfy the third allotment priority, "first local service."

7. C&A's "quiet village" contention is without merit. Wardensville is listed in the United States Census as a town with a population of 246 persons. Hardy has presented evidence establishing that Wardensville has its own government, fire and medical services, post office, zip code, churches, and numerous businesses, including several with the word "Wardensville" in their business names. Moreover,

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[3] ***See*** "Motion to Strike Comments on Counterproposal," filed December 19, 2005

[4] South ***Lake*** *Tahoe,* ***California, and Reno and Minden, Nevada,*** Report and Order. 1 FCC Rcd 1332, 1333 (MMB 1992), citing ***Moscow, Ohio,*** Memorandum Opinion and Order, 5 FCC Rcd **927** (1990).

[5] *Notice*, 20 FCC Rcd at 6205

[b] ***Revision*** of ***FM Assignment Policies and Procedures,*** Second Report and Order, 90 FCC 2d 88 (1982), ***recon. denied,*** 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service: (2) second full-time aural service; **(3)** first local service; and **(4)** other public interest matters. Co-equal weight is given to priorities (2) and (3).

typically we have applied the "quiet village" exception to a first local preference where allotment at either community would provide signal coverage to both communities: and where the larger community has demonstrated a far greater public interest need for a first competitive aural service than that of the smaller community for a first local service.' The "quiet village'' exception generally has been found inapplicable where, as here. neither of those circumstances is present? In any event, Hardy has amply demonstrated that Wardensville is not a quiet village. Accordingly, we conclude that Channel 239A should be allotted as a first local service at Wardensville, West Virginia.

8. We will allot Channel 239A to Wardensville, West Virginia, at city reference coordinates: 39-04-30 North Latitude and 78-35-53 West Longitude. Because Wardensville is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, the successful applicant for Channel 239A at Wardensville will be required to comply with the notification requirement of Section 73.1030(a) of the Commission's rules.[10]

9. The Commission will send a copy of this ***Report*** *and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act."

10. Accordingly, IT IS ORDERED, That effective June 25, 2007, the FM Table **of** Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED as follows:

Community	Channel No.
Wardensville, West Virginia	239A

11. IT **IS** FURTHER ORDERED, That the motion of Hardy County Broadcast Associates, seeking to strike the reply comments of Cornwell and Ailes, Inc. in opposition to Hardy's counterproposal, IS GRANTED.

12. IT IS FURTHER ORDERED, That the petition of Cornwell & Ailes, Inc., seeking the allotment of Channel 239A at Romney, West Virginia, **IS** DISMISSED.

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[7] *Ruarch Associates,* Decision, *99* FCC2d 338 (Rev.Bd. 1984), *affd,* Memorandum Opinion and Order. 101 FCC2d 1358 (1985); and *Santee Cooper Broadcasting* Co.. Decision, *99* FCC2d 781 (Rev.Bd. 1984).

[8] *id.*

[9] *Bloomington and Nashville, Indiana,* Report and Order, 4 FCC Rcd 5765 (MMB 1989); *Scranton and Surfside Beach, South* Carolina, Report and Order, 3 FCC Rcd 2798 (MMB 1988); ***Kingstree*** *and McClellanville,* **South** *Carolina,* Report and Order, 3 FCC Rcd 1637 (MMB 1988*);* and *Lexington,* ***Henry*** *and Parker's Crossroads,* ***Tennessee,*** Report and Order, 11 FCC Rcd 20,199 (MMB 1996). *But cf.* ***New*** *South Broadcasting Corp. v. FCC.* 879 F.2d 867 (D.C.Cir. 1989) (even where there **is** not significant signal overlap, Commission may apply "quiet village" exception based on evaluation of relative needs of competing communities).

[10] 47 C.F.R. § 73.1030(a).

[11] ***See*** 5 U.S.C. § 801 (a)(1)(A).

13. IT **IS** FURTHER ORDERED, That the successful applicant for Channel 239A **at** Wardensville, West Virginia, will he required to comply with the notification requirements of Section 73.1030(a) of the Commission's rules.

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

Charles E. See, President
Cornwell & Ailes, Inc.
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25 South Grafton Street
Romney, West Virginia 26757

Lee J. Peltzman, Esq.
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(Counsel for Hardy County Broadcast Associates)

15. A filing window period for Channel 239A at Wardensville, West Virginia, 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.***

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

17. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072. Questions related to the application filing process for Channel 239A at Wardensville, West Virginia, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John Karousos
Assistant Chief
Audio Division
Media Bureau