

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

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Water Mill and Noyack,
New York)
MB Docket No. 03-44
RM-10650

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 2, 2006

Released: February 6, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making ("NPRM") issued at the request of Isabel Sepulveda, Inc. ("Petitioner"); (2) supporting comments filed by the Petitioner; (3) comments and a counterproposal filed by Sacred Heart University, Inc. ("SHU"); and (4) a supplement to comments and reply comments. For the reasons discussed below, we will grant the Petitioner's rulemaking petition but allot alternate Channel 233A at Water Mill, New York.

BACKGROUND

2. At the request of the Petitioner, the NPRM proposed the allotment of Channel 277A to Water Mill, New York (pop. 1,724) as a first local service. The Petitioner filed brief supporting comments, reiterating its continuing interest to file an application to construct an FM station on Channel 277A at Water Mill.

3. In response to the NPRM, SHU filed comments and a counterproposal. SHU is the licensee of FM Translator W277AB, Noyack, New York, which likely would be required to cease operations upon the activation of the Petitioner's proposed facility on Channel 277A at Water Mill. SHU contends that this displacement would be contrary to the public interest because W277AB is a "super power" translator, authorized to operate with 250 watts effective radiated power at an HAAT of 166.8 meters pursuant to a waiver of Section 74.1235(b) of the Commission's Rules. SHU states that the Commission authorized W277AB in recognition that it would provide service to a substantial area that receives no other noncommercial educational service ("white" area).

4. Although SHU recognizes that W277AB is a secondary service, SHU requests that the

1 Water Mill, NY, 18 FCC Rcd 2387 (MB 2003).

2 In the supplement, a preclusion study previously provided to the Commission by SHU in its comments and counterproposal is resubmitted in a more readable format. Because the resubmitted information is identical to the preclusion study previously provided by the counterproposal deadline in this proceeding, we will accept the supplement.

3 See Sacred Heart University, 8 FCC Rcd 612 (1993).

Commission allot Channel 233A in lieu of Channel 277A at Water Mill to obviate displacement of its translator. However, if Channel 233A cannot be allotted to Water Mill, SHU proposes that the Commission allot Channel \*277A to Noyack, New York, reserved for noncommercial educational use and modify the license for SHU's noncommercial educational Station WSUF(FM), Noyack, New York, from Channel 210B1 to Channel \*277A. This counterproposal is mutually exclusive with the Petitioner's rulemaking petition because Channel 277A at Water Mill would be short-spaced to Channel \*277 at Noyack. In support of this counterproposal, SHU submits a preclusion study to show that no other noncommercial educational frequencies are available for WSUF(FM)'s use and contends that operation on Channel \*277A with Class A facilities would be an improvement over its current Channel 210B1directional facilities. Finally, SHU contends that the Commission can modify WSUF(FM)'s license from the noncommercial reserved band to a reserved channel in the commercial band consistent with past case law.<sup>4</sup>

### DISCUSSION

5. We will allot alternate Channel 233A to Water Mill, New York, because this channel meets our technical requirements and will provide a first local service to Water Mill. As stated in the *NPRM*, Water Mill is a census designated place. In addition, the Petitioner has pointed out that Water Mill is an identifiable geographic entity with its own Zip Code (11976), business area, and telephone exchange. Channel 233A can be allotted at a site that is 1.9 kilometers northeast of the community's center.<sup>5</sup>

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c) (1), 303(g) and (r) 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 23, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Water Mill, New York	233A

7. Accordingly, IT IS ORDERED, That the rulemaking petition filed by Isabel Sepulveda, Inc, IS GRANTED.

8. The window period for filing applications for Channel 233A at Water Mill will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed in a subsequent order.

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, *see* 5 U.S.C. § 801(a)(1)(A).

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

<sup>4</sup> *See, e.g., Siloam Springs, AR*, 2 FCC Rcd 7485 (MMB 1989), *recon. denied*, 4 FCC Rcd 4920 (MMB 1989) (noncommercial educational FM station's license modified from a reserved band to a non-reserved band channel due to TV Channel 6 interference problems); *Cf Rosendale, NY*, 10 FCC Rcd 11471 (1995), *recon. denied*, 11 FCC Rcd 3607 (1996), *rev. denied*, 13 FCC Rcd 20590 (1998) (noncommercial educational FM station's license not modified from a reserved band channel to a non-reserved channel because it did not request that the non-reserved band channel be reserved for noncommercial use; non-reserved channel allotted without reservation and filing window opened for applications).

<sup>5</sup> The reference coordinates for Channel 233A at Water Mill are 40-54-39 NL and 72-20-29 WL.

11. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau