

applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.*

(1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling

interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or the prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 99-3040; MM Docket No. 98-72; RM-9265, RM-9368]

### Radio Broadcasting Services; Middlebury, Berlin and Hardwick, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Dynamite Radio, Inc., substitutes Channel 265C2 for Channel 265A at Middlebury, VT, reallots Channel 265C2 to Berlin, VT, and modifies the license of Station WGTK to specify operation on the higher class channel and specify Berlin as its community of license. See 63 FR 36387, July 6, 1998. At the request of Montpelier Broadcasting, Inc., the

Commission allots Channel 290A to Hardwick, VT, as the community's first local aural service. Channel 265C2 can be allotted to Berlin in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 11.1 kilometers (6.9 miles) north of the community, at coordinates 44-18-15 NL; 72-37-24 WL. The site restriction does not obviate the short-spacings to Stations CBF-FM, Channel 265C1, Montreal, Quebec, and CBF10F, Channel 266B, Sherbrook, Quebec, Canada. Channel 290A can be allotted to Hardwick in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates 44-30-18 NL; 72-22-24 WL. The allotment coordinates do not obviate the short-spacing to Stations CFGL, Channel 289C1, Laval, Quebec, and CIMO, Channel 289C1, Magog, Quebec, Canada. Since both Berlin and Hardwick are located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been obtained. A filing window for Channel 290A at Hardwick, VT, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective February 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98-72, adopted December 28, 1999, and released January 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Middlebury, Channel 265A, and by adding Berlin, Channel 265C2 and Hardwick, Channel 290A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA No. 99-3041; MM Docket No. 99-303; RM-9737]

#### Radio Broadcasting Services; Seymour, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 254A at Seymour, Texas, in response to a petition filed by Seymour Broadcasting Company. See 64 FR 57835, October 27, 1999. The coordinates for Channel 254A at Seymour are 33-29-57 NL and 99-15-06 WL. There is a site restriction 10.1 kilometers (6.3 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 254A at Seymour will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective February 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-303, adopted December 29, 1999 and released January 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 254A at Seymour.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-1265 Filed 1-19-00; 8:45 am]

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA No. 99-3041; MM Docket No. 99-286; RM-9713]

#### Radio Broadcasting Services; Albany, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 255A at Albany, Texas, in response to a petition filed by Albany Broadcasting Company. See 64 FR 52487, September 29, 1999. The coordinates for Channel 255A at Albany are 32-43-36 NL and 99-17-42 WL. With this action, this proceeding is terminated. A filing window for Channel 255A at Albany will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective February 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-286, adopted December 29, 1999 and released January 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's