

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

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 00-14  
Table of Allotments, ) RM-9753  
FM Broadcast Stations. )  
(Elkhorn City and Coal Run, Kentucky) )

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: August 1, 2001 ; Released: August 10, 2001

By the Chief, Allocations Branch:

1. At the request of East Kentucky Broadcasting Corporation (“petitioner”), licensee of Station WPKE-FM, Channel 276A , Elkhorn City, Kentucky, the Allocations Branch has before it the Notice of Proposed Rule Making, 15 FCC Rcd 2012 (2000), proposing the reallocation of Channel 276A from Elkhorn City, and the modification of Station WPKE-FM’ license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Coal Run. No other comments were received.

2. The proposed reallocation was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) (“Change of Community”). As stated in the Notice, Coal Run is an incorporated city with a 1990 U. S. Census population of 262 persons (the 2000 Census population is 577 persons). Coal Run is self-governing with its own mayor, city commissioners, city attorney, city clerk, and volunteer fire department. Coal Run also collects property and occupational taxes. There are also numerous churches, organizations, and businesses. Many of these churches, organizations, and businesses incorporate “Coal Run” in their names, e.g., Coal Run Church of Christ, Coal Run Processing Plant, and Coal Run Coal Company.

3. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change Community, supra. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using

our FM allotment priorities.<sup>1</sup> See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. In making this comparison, we find that the proposed arrangement of allotment triggers priority (3)--first local service. Under this priority, Coal Run would receive its first local aural transmission service, without depriving Elkhorn City (population 1,984) of its sole local service, whereas full-time Station WBPA(AM) would remain licensed to the community. Moreover, both Elkhorn City and Coal Run would continue to receive five or more reception services and are considered to be well-served. While the reallocation would result in a loss to a population of 27,196 persons, it would also provide new service to 40,891 persons. The entire service area would encompass 2,516 square kilometers containing a population of 93,553 persons. Since the Coal Run is not located in or near an urbanized area, a Tuck analysis is not necessary.<sup>2</sup>

5. We believe the public interest would be served by reallocating Channel 276A to Coal Run, Kentucky, since it would provide the community's with its first local aural transmission service, and enable Station WPKE-FM to expand its service area. An engineering analysis has determined that Channel 276A can be reallocated to Coal Run in compliance with the Commission's minimum distance separation requirement with a site restriction of 13.4 kilometers (8.3 miles) south at petitioner's requested site.<sup>3</sup> In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WPKE-FM's license to specify operation on Channel 276A at Coal Run, Kentucky, as its new community of license.

6. Accordingly, pursuant to the authority found 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 24, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City

Channel No.

<sup>1</sup> 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 given to priorities (2) and (3).]

<sup>2</sup> See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>3</sup> The coordinates for Channel 276A at Coal Run are 37-23-57 North Latitude and 82-30-32 West Longitude.

Elkhorn City, Kentucky	----
Coal Run, Kentucky	276A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of East Kentucky Broadcasting Corporation, for Station WPKE-FM, Elkhorn City, Kentucky, IS MODIFIED to specify operation on Channel 276A at Coal Run, Kentucky, South Carolina, 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.

(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.

8. 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, East Kentucky Broadcasting Corporation, licensee of Station WPKE-FM, is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to petitioner, as follows:

East Kentucky Broadcasting Corporation  
250 East Elkhorn Street  
Elkhorn City, Kentucky 41522

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

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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