

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-326
Table of Allotments,)	RM-9755
FM Broadcast Stations.)	RM-9910
(Bowling Green, Bardstown, Lebanon)	
(Junction, and Auburn, Kentucky;)	
and Byrdstown, Tennessee) ¹)	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 21, 2001;

Released: March 2, 2001

By the Chief, Allocations Branch:

1. At the request of WRUS, Inc. (petitioner"), licensee of Station WBVR-FM, Channel 244A, Bowling Green, Kentucky, the Allocations Branch has before it the Notice of Proposed Rule Making, 14 FCC Rcd 18626 (1999), proposing the substitution of Channel 244C3 for Channel 244A at Bowling Green, and the modification of Station WBVR-FM's license accordingly. To accommodate the upgrade, petitioner also proposed the substitution of Channel 297A for Channel 244A at Bardstown, Kentucky, and the modification of Station WOKH(FM)'s license accordingly (RM-9755). Petitioner subsequently filed a counterproposal proposing the substitution of Channel 244C2 for Channel 244A at Bowling Green, Kentucky, the reallocation of Channel 244C2 from Bowling Green to Auburn, Kentucky, and the modification of Station WBVR-FM's license accordingly.² To accommodate the counterproposal, petitioner also requested (a) the substitution of Channel 255A for vacant Channel 244A at Byrdstown, Tennessee; (b) the substitution of Channel 297A for Channel 244A at Bardstown, Kentucky, the reallocation of Channel 297A from Bardstown to Lebanon Junction, Kentucky, and the modification of Station WOKH(FM)'s license accordingly (RM-9910). Petitioner also filed an amendment to the counterproposal.³ The proponents state their intention to apply for the specified channels, if reallocated.

¹ The communities of Lebanon Junction and Auburn, Kentucky, and Byrdstown, Tennessee have been added to the caption.

² The counterproposal was placed on Public Notice on July 7, 2000, Report No. 2424 (RM-9910).

³ Station WOKH(FM) was assigned from CBC of Nelson County, Inc. to Western Kentucky Radio, LLC ("Western") on February 1, 2000, and consummated on April 14, 2000. As a result, petitioner submits a consent statement from Western agreeing to the proposed changes for Station WOKH(FM).

2. In support of its proposal, petitioner states that Auburn is an incorporated community with a 1990 U.S. Census population of 1,273 persons.⁴ It has a mayor and a six-member city council. The community has a 22-member volunteer fire department, two full-time police officers, and a full-time ambulance service. The Auburn Elementary and Middle School has approximately 600 students. The city furnishes water from its own source, has sewer services, and also has a street department. Auburn has a branch library in combination with the Auburn Museum. The community has a very active Historical Society and is the location of an Historic District. Auburn has numerous charitable and service organizations, including the Rotary Club, American Legion, American Legion, Legion Women's Auxiliary, Masonic Lodge, Eastern Star, and Women's Club. There are a total of 14 churches in an around Auburn. Auburn is the home of McCutchen-Coke Park with several baseball fields, tennis courts, football field, running track, picnic and camping facilities. The largest employers in the community are the Auburn Hosiery Mill, Caldwell Industries and Auburn Leather Company. Auburn has restaurants and various other retail establishments, including a large antique mall.

3. Moreover, petitioner states that Lebanon Junction's 1990 U.S. Census population was 1,741, and that its estimated 1996 population was 2,253 persons. Lebanon Junction is an incorporated community located in Southern Bullitt County. The community has a mayor and a five-member city council. Its police department has eight employees, provides fire, water, and sewage facilities to the community. There are two schools, eight churches, numerous retail establishments, gas stations, and charitable and service organizations such as the Lions Club, Eastern Star, and Masons. The community also has a city park.

4. The proposed reallocations were 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").

5. 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.⁵ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

6. We believe the public interest would be served by substituting Channel 244C2 at Auburn, Kentucky, since the upgrade and reallocation would provide the community with its first local aural

⁴ Auburn's 1996 population was estimated at 1,362.

⁵The 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).]

transmission service, triggering priority (3), and expand Station WBVR(FM)'s service area.⁶ The reallocation would not result in the removal of a sole local service, since Bowling Green (population 40,641) would retain two commercial AM stations, one commercial FM station, and three non-commercial FM stations.⁷ To accommodate the reallocation, we also substitute Channel 255A for vacant Channel 244A at Byrdstown, Tennessee; and substitute Channel 297A at Lebanon Junction, Kentucky, and modify Station WOKH(FM)'s license accordingly. Likewise, the reallocation of Channel 297A to Lebanon Junction would provide a first local aural transmission service, triggering priority (3), and would not result in the removal of Bardstown's sole local service, since Station WBRT(AM) would remain licensed to the community.

7. In making this analysis, an engineering study has determined that the reallocation of Channel 244C2 at Auburn would not create any loss area, and would result in a gain of service to an area of 6,040 square kilometers (2,332.1 square miles) containing a population of 208,737 persons. The reallocation of Channel 297A Lebanon Junction would result in a loss area of 212.1 square kilometers (81.9 square miles) containing a population of 2,197 persons. However, the loss area would continue to receive five or more reception services and is considered to be well-served. Moreover, the Lebanon Junction reallocation would result in a gain area of 887.8 square kilometers (332.8 square miles) containing a population of 46,850 persons, with a net gain of 675.7 square kilometers (260.9 square miles) to a population of 44,653 persons. All gain areas are currently served by five or more reception services. Neither the reallocation at Auburn nor Lebanon Junction, Kentucky is located in or near an urbanized area.

8. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). However, petitioner advises that there is common ownership between WRUS, Inc. and Western Kentucky Radio, LLC and that Western has consented to the proposed changes. Therefore, there is no need for petitioner to compensate or reimburse Western for any of its expenses that result from the instant rule making, and no such agreement exists, either oral or written.

Technical Summary

9. An engineering analysis has determined that Channel 244C2 can be reallocated at Auburn in compliance with the Commission's minimum distance separation requirements with a site restriction of 30.9 kilometers (19.2 miles) northeast at petitioner's requested site.⁸ Additionally, Channel 255A can be substituted for vacant Channel 244A at Byrdstown with a site restriction of 13.1 kilometers (8.2 miles) southeast at petitioner's requested site.⁹ Channel 297A can be reallocated to Lebanon Junction

⁶ We note that on March 17, 1999, Way-FM Media Group, Inc. filed an application (File No. BPED-19990317MC) for an FM non-commercial educational station (Channel 201C3) at Auburn, Kentucky, which is pending.

⁷ AM Stations WKCT and WBGH, non-commercial FM Stations WKYU-FM, WCVK and WWHR, and commercial FM Station WDNS would remain licensed to the community.

⁸ The coordinates for Channel 244C2 at Auburn are 37-02-29 North Latitude and 86-26-36 West Longitude.

⁹ The coordinates for Channel 255A at Byrdstown are 36-30-23 North Latitude and 85-00-32 West Longitude.

with a site restriction of 13.6 kilometers (8.5 miles) southeast at petitioner's requested site.¹⁰ In accordance with Section 1.420(i) of the Commission's Rules, we will modify Station WBVR-FM's license to specify operation on Channel 244C2 at Auburn, Kentucky; and modify Station WOKH(FM)'s license to specify operation on Channel 297A at Lebanon Junction, Kentucky.

10. 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 April 16, 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:

<u>City</u>	<u>Channel No.</u>
Bowling Green, Kentucky	227C3
Auburn, Kentucky	244C2
Bardstown, Kentucky	---
Lebanon Junction, Kentucky	297A
Byrdstown, Tennessee	255A

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of WRUS, Inc. for Station WBVR-FM at Bowling Green, Kentucky, IS MODIFIED to specify operation on Channel 244C2 at Auburn, Kentucky, 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.

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Western Kentucky Radio, LLC, for Station WOKH(FM) at Bardstown, Kentucky, IS MODIFIED to specify operation on Channel 297A at Lebanon

¹⁰ The coordinates for Channel 297A at Lebanon Junction are 37-47-00 North Latitude and 85-35-28 West Longitude.

Junction, Kentucky, 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.

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, WRUS, Inc. and Western Kentucky Radio, LLC, licensees of Stations WBVR-FM and WOKH(FM), respectively, are required to submit a rule making fee in addition to the fee required for the application to effect the upgrade and/or change in community of license.

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

Western Kentucky Radio, LLC
1715 Nashville Street
Russellville, Kentucky 42276

15. IT IS ORDERED, That the petition filed on August 13, 1999 by WRUS, Inc., requesting the substitution of Channel 244C3 for Channel 244A at Bowling Green, Kentucky (RM-9755), IS DISMISSED.

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

17. 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