

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	
FM Broadcast Stations.	)	MM Docket No. 01-224
(Shelbyville and LaVergne, Tennessee)	)	RM-10101
	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: October 16, 2002;**

**Released: October 25, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making*<sup>1</sup> filed by WYCQ, Inc. (“petitioner”), licensee of Station WBUZ(FM) (formerly WZPC(FM)), proposing the reallocation of Channel 275C1 from Shelbyville to LaVergne, Tennessee, and the modification of Station WBUZ(FM)’s license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to LaVergne. No other comments were received.

2. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 “grandfathered” short-spacings and those permitted under Section 73.215 of the Commission’s Rules.<sup>2</sup> Consistent with that policy, we note that Station WBUZ(FM) is a pre-1964 “grandfathered” station that is short-spaced to Station WKDF(FM), Channel 277C, Nashville, Tennessee. However, since Station WBUZ(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WBUZ(FM) should be afforded the opportunity to change its community of license.

3. The proposal was filed pursuant to Section 1.420(i) of the Commission’s Rules which permits 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.<sup>3</sup> Although Station

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<sup>1</sup> *Shelbyville and LaVergne, Tennessee*, 16 FCC Rcd 16331(2001).

<sup>2</sup> See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*; and *Berlin and North Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) ((pre-1964 “grandfathered” short-spacing); *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 “grandfathered” short-spacing); and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

<sup>3</sup> See *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).

WBUZ(FM) does not seek to change its transmitter, its 70 dBu signal presently covers 66.5% of the Nashville Urbanized Area. The issue of whether a proposed reallocation and change of community of license would result in the migration of stations from rural to urban areas in violation of Section 307(b) of the Commission's Act, especially where, as here, no technical change is proposed, is a matter that is best addressed by applying our existing law and policy in this area—that is, examining whether a suburban community is sufficiently independent of a urbanized area to warrant a first local service preference under our well-established *Huntington-Tuck* policy and comparing the existing and proposed arrangement of allotments using our FM priorities<sup>4</sup>. Applying those policies to this particular case, we find that petitioner has demonstrated that LaVergne passes the *Tuck* test.<sup>5</sup> Specifically, petitioner proposes to reallocate Channel 275C1 from Shelbyville (population 16,105)<sup>6</sup> which is not located within an urbanized area, to LaVergne, which is located within the Nashville Urbanized Area. Petitioner has demonstrated that LaVergne is an incorporated community with a population of 18,687 persons. LaVergne is self-governing with its own Mayor, Vice Mayor, Aldermen, City Administrator, Police Department, Fire Department, Public Works Department, City Recorder, Tax Collector, Library Director, Finance Department, and Department of Planning and Codes. There are also three elementary schools, one middle school, one senior high school, numerous churches, organizations, and businesses. Consequently, the reallocation of Channel 275C1 from Shelbyville to LaVergne should be considered as a first local service under priority (3).

4. By way of comparison, retaining Channel 275C1 at Shelbyville would trigger priority (4)--other public interest matters. The reallocation would not result in the removal of Shelbyville's sole local service, whereas Stations WBIA(FM), WYKW(FM) (noncommercial educational stations), WLIJ(AM)

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<sup>4</sup> The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 29, 88 (1982).

<sup>5</sup> See *Huntington Broadcasting co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC) ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). *KFRC* and *Tuck* clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," that is, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the urbanized area of the city. Third, the Commission determines the interdependence of the suburban community with the central city. This third type of evidence involves the following eight additional factors: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378.

<sup>6</sup> All population figures are taken from the 2000 U.S. Census.

and WZNG(AM) would remain licensed to the community.<sup>7</sup> We note that both Shelbyville and LaVergne have five or more reception services and are considered to be well-served. Moreover, Station WBUZ(FM) will continue to provide city grade coverage to 100% of Shelbyville. It is well-established under Commission precedent that a first local service to a community under priority (3) is to be favored over a fourth local service to a community. Consequently, we will grant petitioner's proposal because it will result in a preferential arrangement of allotments.

5. Based upon the information before us, we believe the public interest would be served by reallocating Channel 275C1 from Shelbyville to LaVergne, Tennessee, since it would provide the community with its first local aural transmission service, without depriving Shelbyville of its sole local service. An engineering analysis has determined that Channel 275C1 can be reallocated to LaVergne in compliance with the Commission's minimum distance separation requirements at petitioner's presently authorized site.<sup>8</sup> In accordance with Section 1.420(i) of the Commission's Rules, we will modify petitioner's license to specify operation on Channel 275C1 at LaVergne, Tennessee, as its new community of license.

6. Accordingly, pursuant to the authority contained 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 December 9, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below to read as follows::

<u>City</u>	<u>Channel No.</u>
Shelbyville, Tennessee	----
LaVergne, Tennessee	275C1

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of WYCQ, Inc, Shelbyville, Tennessee, IS MODIFIED to specify operation on Channel 275C1 at LaVergne, Tennessee, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WBUZ(FM)'s license, BLH-19990927ABI, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-19990927ABI, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of

<sup>7</sup> On June 23, 1999, American Family Association was granted a construction permit (File No. BPED-19990623MB) for Channel 217A (a non-commercial educational station) at Shelbyville.

<sup>8</sup> The coordinates for Channel 275C1 at LaVergne are 35-48-01 North Latitude and 86-37-17 West Longitude.

commencement of program tests.

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, WYCQ, Inc., licensee of Station WBUZ(FM), is required to submit a rule making fee in 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 the following:

WYCQ, Inc.  
P.O.Box 150846  
Nashville, Tennessee 37215  
(Licensee of Station WBUZ(FM))

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau