

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-244
Table of Allotments,)	RM-9678
FM Broadcast Stations.)	RM-9873
(Cumberland, Kentucky and Weber City, Virginia;)	
Glade Spring, Marion, Richlands and)	
Grundy, Virginia) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 6, 2002;

Released: March 19, 2002

By the Chief, Allocations Branch:

1. At the request of Cumberland City Broadcasting Company (“petitioner”), licensee of Station WSEH(FM), Channel 274A, Cumberland, Kentucky, the Allocations Branch has before it the Notice of Proposed Rule Making, 14 FCC Rcd 10545 (1999), proposing the substitution of Channel 274C3 for Channel 274A at Cumberland, the reallocation of Channel 274C3 from Cumberland, Kentucky to Weber City, Virginia. Petitioner also requested the modification of Station WSEH(FM)’s license to specify Weber City as its new community of license. Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if reallocated to Weber City. A counterproposal and comments were filed by Holston Valley Broadcasting Corporation (“Holston”), proposing the allotment of Channel 274A Glade Spring, Virginia, as the community’s first local aural transmission service.² To accommodate the allotment, petitioner also requested (a) the substitution of Channel 263A for Channel 273A at Marion, Virginia, and the modification of Station WOLD-FM’s license accordingly; (b) the substitution of Channel 249A for Channel 264A at Richlands, Virginia, and the modification of Station WRIC-FM’s license accordingly; and (c) the substitution of Channel 264A for Channel 249A at Grundy, Virginia, and the modification of Station WMJD(FM)’s license accordingly. An Order to Show Cause, 16 FCC 19431 (2001), was issued to the licensee of Station WMJD(FM) in Grundy, Virginia, to show why its license should not be modified to specify operation on Channel 264A. Comments in support of the counterproposal were filed by Peggy Sue Broadcasting Corporation, licensee of WRIC-FM, Richlands, Virginia. Holston filed further comments. Reply comments to the counterproposal were

¹ The communities of Glade Spring, Marion, Richlands and Grundy were added to the caption.

² The counterproposal was placed on Public Notice on May 15, 2002, Report No. 2411 (RM-9873).

filed by petitioner.

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"). In support of its proposal, petitioner states Weber City is located in Scott County and has its own mayor/council form of government. Weber City has its own local post office, zip code, churches, banks, schools, and parks. Weber City also has many local businesses which employ local residents including two large grocery stores, tobacco warehouse and a bookbinding company. Petitioner further states Weber City has its own local police and fire services, and a local zoning body and taxing authority. Petitioner asserts that Weber City clearly has all of the Tuck criteria to establish it as a separate and independent community.³

3. In support of the Glade Spring proposal, Holston states that Glade Spring is an incorporated town in Washington County, Virginia with a 1990 U.S. Census population of 1,435 (the 2000 U.S. Census population is 1,374 persons). Glade Spring has a post office, zip code (24340), a fire department, a police department, 13 churches, a library, and a high school. Holston asserts that Glade Spring is clearly a community for allotment purposes, citing Willows and Dunnigan, California, 9 FCC Rcd 1802 (1994). Holston argues the Weber City is the larger of the two communities and should be afforded the allotment pursuant to Section 307(b) of the Communications Act. Holston claims that petitioner seeks to relocate Station WSEH(FM) from a mountainous rural area in southeast Kentucky to Weber City, Virginia, which for all practical purposes is a suburb of Kingsport, Tennessee, one of the "Tri-Cities" (along with Johnson City and Bristol), which is well-served by radio and television stations. Holston argues that, unlike the Weber City allotment, the Glade Spring proposal does not deprive Cumberland of its only commercial FM allotment, but rather creates a new service. Thus, Holston concludes that the Glade Spring counterproposal better serves Section 307(b) of the Commission's Rules, citing St. Augustine and Callahan, Florida, 46 RR 2d 1295 (1980).

4. Holston states that the Glade Spring proposal requires only the involuntary channel change of one station, Station WMJD(FM), since Stations WRIC-FM and WOLD-FM have agreed to the requested channel changes. With respect to Station WOLD-FM, Holston has submitted a copy of a letter from Emerald Sound, Inc., consenting to the change of its channel and transmitter site. Holston states its willingness to reimburse all three stations for reasonable and prudent expenses pursuant to Circleville, Ohio, 8 FCC 2d 159 (1967). Holston affirms its intention to apply for

³ 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).

Channel 274A at Glade Spring, if allotted.

5. In its reply comments, petitioner states that Holston's reliance on the 1990 Census that shows Glade has 58 more residents than Weber City (population 1,377) is inaccurate and does not depict the actual population of the community (the 2000 U.S. Census population is 1,333). Petitioner argues that the population difference (41 persons) is insignificant in light of the substantial area and population gains that the upgrade and reallocation of Channel 274C3 to Weber City would provide. Petitioner further argues that Holston's claim that the reallocation from Cumberland to Weber City would not be in the public interest because it would move the channel to a community with a smaller population is unfounded, citing Pauls Valley, et. al., Texas, 13 FCC Rcd 13458 (1998). Finally, petitioner questions Holston's motives for filing the counterproposal. Petitioner advises that Holston owns and operates a number of broadcast facilities within the Bristol-Kingsport-Johnson City, Tennessee-Virginia market. Petitioner alleges that since this is not the first time Holston has sought to keep competition out of the market by filing a counterproposal, it appears that the instant counterproposal is a "blocking scheme" to thwart the reallocation and upgrade by a broadcaster who is serious about providing a first local service to a deserving community. Therefore, petitioner concludes that the counterproposal filed by Holston should be denied.

Discussion

6. As an initial matter, we find that both Weber City and Glade Spring are communities for allotment purposes. However, conflicting proposals are considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). Since the staff could find no alternate Class A channel for Glade Spring, we need to compare the communities. However, before making such a comparison, in considering a change of community of license proposal, we must first determine whether the Weber City reallocation would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change of Community, *supra*. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.⁴ See Revision of FM Assignment Policies and Procedures, *supra*.

7. Under this comparison, we believe that the upgrade and reallocation of Channel 274C3 and Station WSEH(FM) to Weber City would be preferred over the retention of the allotment and station in Cumberland because the reallocation would trigger a higher allotment priority. Specifically, the reallocation would constitute a first local service to Weber City (population 1,333) under priority (3). By way of comparison, the retention of the station in Cumberland (population 2,611) would trigger priority (4) as a second service because station WCPM(AM) is already licensed to that community.

⁴ 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).]

8. We further believe that the reallocation to Weber City triggers priority (3) as a first local service. Although Weber City is located outside the Kingsport, Tennessee-Virginia Urbanized area, Station WSEH(FM)'s 70 dBu signal will encompass 100% of that Urbanized area, and, as a result, petitioner provided a Tuck showing that it should be credited with a first local service and that the local stations in the Kingsport, Tennessee-Virginia Urbanized Area should not be attributed to Weber City. We have reviewed that showing and agree that Weber City is sufficiently independent from the central city of the Urbanized Area to be credited with a first local service for purposes of comparison under the FM allotment priorities. We base this finding on the presence of the majority of the eight factors on interdependence outlined in the Tuck test.⁵ Of those eight factors, we find that petitioner has satisfied factors (3), (4) (5) (6) and (8). No information was given for factors (1), (2) or (7). While a first local preference is not dispositive on the criteria of signal population and size of the suburban community relative to the adjacent city, we note that the city boundaries between Weber City and Kingsport (population 44,905) are less than five miles.

9. We now must compare the reallocation and upgrade of Station WSEH(FM) on Channel 274C3 at Weber City with the allotment of Channel 274A at Glade Spring, Virginia. Where, as here, there is a choice between two mutually exclusive proposals both involving priority 3 (first local service), the Commission has used the populations of the communities of license as the tie-breaking mechanism. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (Comm. 1982). We have also taken into account the number of reception services available to the populations in the competing communities. Where the number of reception services was above a threshold level, the Commission has based the decision on a straight population comparison. See, e.g., Blanchard, Louisiana and Stephens, Arkansas, 10 FCC Rcd 9828, 9829 (Comm. 1995) and cases cited therein. See also Rose Hill, Trenton, Aurora and Ocracoke, North Carolina, 11 FCC Rcd 21223 (1996); Athens and Atlanta, Illinois, 11 FCC Rcd 3445 (1996). As indicated in the Blanchard case, the population difference has been dispositive even if the difference is small. In that case, the population difference was

⁵ In determining whether a suburban community should be denied a first local service preference, the Commission has stated that it will rely primarily on three criteria—signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city. There are eight factors relevant to interdependence the Commission considers: (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.

38 people, and the allotment was made to the community with the larger population.

10. We believe that the same result is warranted in the instant case. Since both communities have 14 FM reception services, the allotment in this case will be made to Glade Spring because of its higher population (i.e., 1,374 persons versus 1,333 persons for Weber City). In making this decision, we recognize that the reallocation and upgrade of Station WSEH(FM) at Weber City would result in a loss of service to 57,146 persons and a gain of service to 324,873 persons, for a net gain of service to 265,263 persons. We do not believe that this net gain of service should change our result because most of this net gain constitutes enhanced secondary service under priority (4) as opposed to first local transmission service under priority (3). Since we are ultimately deciding this case upon first local transmission service principles, we must be governed by the populations that would receive first local transmission service as opposed to enhanced secondary service. Our view is further buttressed by the fact that the gain and loss areas are otherwise well served with five or more full-time reception services. Finally, by preferring the Glade Spring proposal over Weber City, we are not only providing the larger community with a first local transmission service but at the same time are retaining an FM station in Cumberland, resulting in a net gain of FM allotments in the Table.

We issued an Order to Show Cause, ordering Virginia-Kentucky Broadcasting Co. ("VKBC") to show why its channel should not be modified. No response was received from VKBC. Accordingly, pursuant to Section 1.87 of the Commission's Rules, VKBC is deemed to have consented to the proposed channel change at Grundy, Virginia. As previously indicated, both Station WOLD-FM, Marion, Virginia, and Station WRIC-FM, Richlands, Virginia, have agreed to the requested channel changes.

12. In accordance with Circleville, Ohio, supra, Holston has indicated its willingness to reimburse Stations WOLF-FM, WRIC-FM and WMJD(FM) or reasonable and prudent expenses for their respective channel changes.

13. We believe the public interest would be served by allotting Channel at Glade Spring, Virginia, as the community's first local aural transmission service. An engineering analysis has determined that Channel 274A can be allotted to Glade Spring in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) east at petitioner's requested site.⁶ Additionally, to accommodate the allotment, Channel 263A can be substituted at Marion at petitioner's requested site;⁷ Channel 249A can be substituted at Richlands at Station WRIC-FM's presently licensed site;⁸ and Channel 264A can be substituted at Grundy at

⁶ The coordinates for Channel 274A at Glade Spring are 36-45-15 North Latitude and 81-37-56 West Longitude.

⁷ The coordinates for Channel 263A at Marion are 36-51-23 North Latitude and 81-30-21 West Longitude.

⁸ The coordinates for Channel 249A at Richlands are 37-09-04 North Latitude and 81-53-56 West Longitude.

Station WMJD(FM)'s presently licensed site.⁹

14. 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 May 3, 2002, 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>
Glade Spring, Virginia	274A
Marion, Virginia	230C, 263A, 278A
Richlands, Virginia	249A, 288A
Grundy, Virginia	264A

15. A filing window for Channel 274A at Glade Spring, Virginia, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

16. IT IS FURTHER ORDERED, That the petition for rule making filed by Cumberland City Broadcasting Company, IS DENIED.

17. 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:

Emerald Sound, Inc. Post Office Box 31 Marion, Virginia 24354 (Licensee of Station WOLD-FM))	Peggy Sue Broadcasting Corp. 137 Oriole Avenue Princeton, West Virginia 24740 (Licensee of Station WRIC-FM)
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Virginia-Kentucky Broadcasting Co.
Post Office Box 2054
Grundy, Virginia 24614
(Licensee of Station WMJD(FM))

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

⁹ The coordinates for Channel 264A at Grundy are 37-18-08 North Latitude and 82-07-04 West Longitude.

19. 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