

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 03-13
Table of Allotments,) RM-10628
FM Broadcast Stations.)
(Marion and Johnston City, Illinois))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 23, 2003

Released: July 24, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* (“Notice”)¹ issued in response to a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc. (“Petitioner”), licensee of Station WDDD-FM, Channel 297B, Marion, Illinois. Petitioner requests the reallocation of Channel 297B to Johnston City, Illinois, as that community’s first local FM transmission service, and the modification of Station WDDD-FM’s license to specify Johnston City as its community of license. Petitioner filed comments and reply comments reaffirming its proposal and reiterating its intent to implement its proposal if the Commission reallocates Channel 297B to Johnston City, Illinois. Infinity Broadcasting Operations, Inc., licensee of Stations WBBM(AM), WBBM-FM, WSCR(AM), and WXRT-FM, Chicago, Illinois; WGN Continental Broadcasting Company, licensee of WGN(AM), Chicago, Illinois; and Bonneville International Corporation (“BIC”), operator of Stations WNND(FM), WLUP-FM, and WDRV(FM), Chicago, Illinois, WTMX(FM), Skokie, Illinois, and WWDV(FM), Zion, Illinois² (collectively referred to as “Joint Parties”) filed comments. For the reasons stated below, we grant Petitioner’s request to change its community of license to Johnston City.

2. Petitioner filed its request to reallocate Channel 297B to Johnston City, Illinois, pursuant to the provisions of 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.³ Johnston City is not located within any Urbanized Area, and Petitioner’s 70 dBu signal will not cover any portion of an Urbanized Area. Petitioner is licensed to serve Johnston City with Station WDDD(AM) and has a construction permit for expanded band station WHITE(AM), Johnston City. Station WHITE has applied to change its community of license from Johnston City to Berwyn, Illinois (BMAP-20010719AAN) (the “Berwyn Application”). The Joint Parties also have filed a petition to deny the Berwyn Application and argue that should the application to relocate Station WHITE to Berwyn be granted and should Petitioner decide thereafter to turn in its license for

¹ *Marion and Johnston City, Illinois*, 18 FCC Rcd 449 (M.B. 2003).

² These five stations are licensed to Bonneville Holding Company, a BIC-affiliated company.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”).

Station WDDD(AM) within five years of the date that Station WHITE is licensed, then Johnston City would be left without local broadcast radio service. Regardless of any possible future disposition of the Station WDDD(AM) license, Petitioner explains that it is willing and intends by the filing of the instant petition for rule making in this proceeding to replace any possible removal of local radio service from Johnston City by relicensing Station WDDD-FM to provide local service to Johnston City.

3. The Joint Parties argue that Johnston City is not in need of local service because it has Station WDDD(AM) and a construction permit for expanded band Station WHITE. On the other hand, the Joint Parties argue, if Petitioner's request to reallocate Station WDDD-FM from Marion to Johnston City (population of 3,557) were granted, Petitioner would deprive Marion, a community of 16,035 persons, of one of its three local radio stations in favor of providing the much smaller community of Johnston City with a second local service. The Joint Parties assert that, in determining whether a proposal will result in a preferential arrangement of allotments, the Commission compares the existing and proposed arrangements of allotments under the allotment priorities set forth in *FM Priorities*.⁴ The Joint Parties claim that the provision of service to Johnston City falls under priority (4) of the FM Priorities and that the Commission has granted a reallocation under priority (4) in some instances where there is no change in transmitter site such as in the present case. Nevertheless, the Joint Parties argue, in each of those cases, the Commission allowed reallocation to the community with the larger population. Thus, the Joint Parties state, since the requested reallocation involves reallocating a channel to a less populous community, the provision of second local service to Johnston City would not advance the Commission's allotment priorities. The Joint Parties contend, in the alternative, that the rule making proceeding herein and the application to change the community of license of Station WHITE from Johnston City to Berwyn are each impermissibly contingent on the other and therefore must be denied.

4. To summarize, the Joint Parties argue that there is too much local service in Johnston City to reallocate a channel from Marion, but too little local service in Johnston City to permit the grant of the Berwyn Application. Alternatively, the proposals, which would help ensure the continuation of local service in Johnston City, are "impermissibly interrelated." We reject these inventive but flawed contentions.

5. The Commission adopted a national 88-station expanded band allotment plan (1605 kHz-1705 kHz) as part of a multi-faceted initiative to reduce interference in the AM band and to help revitalize the AM service.⁵ Certain high interference stations were provided an opportunity to apply for Model I facilities and to operate expanded band facilities, as well as their existing band facilities, on a licensed basis for five years. At the end of this period of dual operations, licensees are required to submit for cancellation—at their sole discretion—either the existing or expanded band station license. Consistent with this approach, Petitioner has not—and need not—commit at this time to the surrender

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982) ("*FM Priorities*"). The FM allotment priorities are: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁵ See *Report and Order, Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993), *review denied sub nom. N.A.A.C.P. v. FCC*, 40 F.3d 474 (D.C. Cir. 1994) (subsequent history omitted).

of either the existing or expanded band authorization. Plainly, the Commission prefers licensees to surrender the high-interference existing band authorization. In this regard, the record to date is very encouraging. Ten authorizations, each for an existing band “pair,” have been surrendered. Based on the power level of the authorized facilities, the relatively uncongested spectrum between 1605 kHz and 1705 kHz, and the voluntary nature of this program, it is reasonable to expect that most stations will surrender their existing band authorizations.

6. In this allotment proceeding, our central concern is whether we can harmonize our interest for preserving local service in Johnston City with the construction and permanent licensing of an expanded band station. For exactly the reasons the Joint Parties urge the Commission to deny the Berwyn Application,⁶ it is inappropriate to treat the rulemaking as a choice between a third local service in Marion or a second service in the smaller community of Johnston City. This characterization ignores the high likelihood that Petitioner will surrender the WDDD(AM) authorization in a number of years. In these relatively unusual circumstances, we find that the retention in a community of an existing band pair to an expanded band station as the community’s sole local service is inconsistent with listeners’ legitimate expectation of continued local transmission service. Thus, we conclude that the Johnston City reallocation advances our policy goal of preserving local service in Johnston City. This goal, whether characterized as a priority (3) or (4) matter under our *FM Priorities*, outweighs our interest in preserving a third local service in Marion, a priority (4) factor.

7. In a separate action taken today, the staff grants the Berwyn Application. In order to ensure an adequate level of service in Johnston City, the WHITE construction permit includes a condition providing that operations of Station WHITE at Berwyn may not commence until a new local service is initiated at Johnston City. Moreover, the imposition of this condition does not demonstrate that the proposals are impermissibly contingent. First, Section 73.3517 of the Rules is limited to contingent applications and does not apply to related application and rulemaking proceedings. Second, the Commission routinely allows allotment “backfills” by existing stations to preserve local service.⁷

8. Accordingly, we believe that the public interest would be served by reallocating Channel 297B from Marion to Johnston City. The reallocation of Channel 297B to Johnston City would not deprive Marion of its sole local aural transmission outlet because Marion would continue to be served by Stations WAWJ(FM) and WGGH(AM). Since Petitioner intends to utilize its present transmitter site for the reallocation of Channel 297B to Johnston City, Illinois, there are no gain or loss areas associated with this proposal. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission’s Rules, we will modify the license of Station WDDD-FM to specify operation on Channel 297B at Johnston City, Illinois.

9. Channel 297B can be allotted to Johnston City, Illinois, in conformity with the technical requirements of the Commission’s Rules, utilizing Petitioner’s requested site at the coordinates of 37-45-15

⁶ See paragraph 2, *supra*.

⁷ See *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291 (2003) (upheld the “backfill” process insofar as an existing licensee is allowed to change its community of license for the purpose of preserving sole local service in a community which is about to lose its sole existing local service).

North Latitude and 88-56-05 West Longitude, with a site restriction of 7.4 kilometers (4.6 miles) south of Johnston City, Illinois.

10. 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 September 8, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Marion, Illinois	-----
Johnston City, Illinois	297B

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Clear Channel Broadcasting Licenses, Inc., for Station WDDD(FM), Marion, Illinois, IS MODIFIED to specify operation on Channel 297B at Johnston City, Illinois, 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 of the Commission’s Rules.

(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. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), 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, Clear Channel Broadcasting Licenses, Inc. licensee of Station WDDD-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.

13. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

14. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division

Media Bureau