

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

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|--------------------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 02-114 |
| FM Table of Allotments, |) | RM-10426 |
| FM Broadcast Stations. |) | |
| (Meridianville, Tuscumbia, Carrollton, and |) | |
| Gurley, Alabama) |) | |
| |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: December 18, 2003

Released: December 23, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making* issued at the joint request of Capstar TX Limited Partnership, licensee of Station WXQW(FM), Meridianville, Alabama, and Clear Channel Broadcasting Licenses, Inc., licensee of Stations WLAY-FM, Tuscumbia, Alabama, and WZBQ, Carrollton, Alabama ("Petitioners"). Petitioners request the reallocation of Channel 231A from Meridianville, Alabama to Gurley, Alabama and modification of the license of Station WXQX(FM) to reflect the change of community. They also request the substitution of Channel 262C2 for Channel 262C1 from Tuscumbia, Alabama, and reallocation of Channel 262C2 from Tuscumbia to Meridianville, Alabama, and modification of the license of Station WLAY-FM to reflect the change of community. Last, they request the downgrade of Station WZBQ(FM), Carrollton, Alabama, from Channel 231C to Channel 231C0 to accommodate the modification at Gurley. Petitioners filed joint comments reiterating their intentions to file the necessary applications to effectuate these changes and to construct and operate the stations as authorized. We received no other comments.

2. Petitioners filed their proposal in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ Here, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. Based on the FM allotment priorities, we believe that this proposal will serve the public interest and should be granted. This proposal will not deprive Tuscumbia of its only aural transmission service. It will also provide a first local aural transmission service at Gurley, and upgrade the sole local

¹ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1982).

aural transmission service at Meridianville. In support of the petition, Petitioners include sufficient information to satisfy community status at Gurley and the independence of both Gurley and Meridianville from the Huntsville Urbanized Area.³ As such, Petitioners contends that both communities would be entitled to consideration as first local first.⁴ We will grant this proposal. In this instance, we would not be concerned with the migration from a rural area to an urban area because Station WXQW, which is proposing to relocate to Gurley, already covers 100% of the Huntsville, Alabama, Urbanized Area and will continue to do so.⁵ Further, Station WLAY, which is proposing to move to Meridianville, is relocating its transmitter site from a site within the Florence, Alabama, Urbanized Area to a community outside any urbanized area, but to a site from which it will place a 70dBu signal over 100% of the Huntsville Urbanized Area. Meridianville has been served by a station that covered 100% of the Huntsville Urbanized Area, and the reallocation here merely replaces its existing service. Tuscumbia will continue to be served by Stations WVNA(AM) and WZZA(AM). The petitioners have provided an analysis to prove that Meridianville continues to be independent of the Huntsville Urbanized Area.⁶ No comments were filed which questioned this analysis and we are satisfied that Meridianville remains independent of the Huntsville Urbanized Area.

4. With respect to the relative population losses and gains of this proposal, the reallocation of Channel 231A from Meridianville to Gurley will result in a net loss of service to 2,157 persons, all of whom will continue to be well served with at least five reception services. The reallocation of Channel 264C2 from Tuscumbia to Meridianville will result in a net gain of service to 76,074 people. In regard to the area losing service, our analysis shows that there would be a few small sections of the loss area of Channel 262C1 at Tuscumbia that would be left with only four full-time services after the change of community takes place. The remainder of the area will be served by five or more aural services. Finally, a Channel 262C1 allotment at Tuscumbia is short-spaced to the Channel 263C allotment formerly at Anniston, Alabama. The Tuscumbia reallocation is conditioned on the reallocation of Station WWWQ(FM), Channel 263C, Anniston, Alabama to College Park, Georgia that was granted in MM Docket No. 98-112 and is effective but not final.⁷

5. 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 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective, February 6, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

| <u>Community</u> | <u>Channel</u> |
|------------------------|----------------|
| Carrollton, Alabama | 231C0 |
| Gurley, Alabama | 231A |
| Meridianville, Alabama | 262C2 |
| Tuscumbia, Alabama | --- |

³ The Town of Gurley (population 876 persons) was incorporated in 1890. It has an elected mayor/town council form of government, and provides its own police and fire protection, as well as water sewer and street maintenance. It has a post office branch, a library branch, and county elementary and middle schools within its town limits. It has several retail establishments, churches, and civic organizations.

⁴ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) and *RKO General*, 5 FCC Rcd 3222 (1990).

⁵ See *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864, 2868 (MMB 1995).

⁶ This analysis shows that Meridianville is a Census Designated Place, and has a 2000 U.S. Census population of 4,117 persons. It has its own zip code and U.S. Post Office. It has municipal services, an airport, numerous businesses, churches, schools, and medical services.

⁷ See *Auburn, et al., Alabama*, 18 FCC Rcd 10333 (MB 2003).

6. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

Capstar TX Limited Partnership and
Clear Channel Broadcasting Licenses, Inc.,
c/o Mark N. Lipp
J. Thomas Nolan
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue, NW
Washington, DC 20005-1008
(Counsel to Petitioners)

7. Channel 231A can be allotted at Gurley at a site 12.8 kilometers (8.0 miles) northwest of the community.⁸ Channel 262C2 can be allotted at Meridianville at a site 15.6 kilometers (9.7 miles) west of the community.⁹ Channel 231C0 can be allotted at Carrollton at Station WZBQ's licensed site.¹⁰

8. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Capstar TX Limited Partnership for Station WXQW(FM), Meridianville, Alabama, IS MODIFIED to specify operation on Channel 231A at Gurley, Alabama, in lieu of Channel 231A at Meridianville, and the licenses of Clear Channel Broadcasting Licenses for Stations WLAY-FM, Tuscumbia, Alabama, and WZBQ(FM), Carrollton, Alabama, ARE MODIFIED to specify operation on Channel 262C2 at Meridianville, in lieu of Channel 262C1 at Tuscumbia, and Channel 231C0 in lieu of Channel 231C, respectively, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, each 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 not be conducted by Station WXQW(FM) at Gurley until Station WLAY-FM has commenced operation at Meridianville and Station WZBQ(FM) has commenced operation at Carrollton in accordance with Section 73.1620 of the 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 unless the proposed facilities are categorically excluded from environmental processing.
- d) No construction is to commence for any of the changes approved in this *Order* until finality has occurred in MM Docket 98-112.
- e) Operating authority for Station WLAY-FM, Channel 262C2 at Meridianville may not be granted until operations have commenced by Station WWWQ(FM), Channel 263C at College Park, Georgia.

⁸ Coordinates for Channel 231A at Gurley are 34-44-29 NL and 86-30-26 NL

⁹ Coordinates for Channel 262C2 at Meridianville are 34-49-06 NL and 86-44-16 WL

¹⁰ Coordinates for Channel C0 at Carrollton are 33-13-6 NL and 88-5-46 WL.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in 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 of community. As a result of this proceeding, Capstar TX Limited Partnership, licensee of Station WXQW(FM), and Clear Channel Broadcasting Licenses licensee of Station WLAY-FM, are required to submit rule making fees in addition to the fees required for the applications to effect the changes of community for Stations WXQW(FM) and WLAY-FM, respectively.

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

11. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau