

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-420
Table of Allotments,) RM-11119
FM Broadcast Stations.)
(Morganfield and Corydon, Kentucky))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 23, 2005

Released: June 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Notice of Proposed Rule Making issued at the request of Union County Broadcasting Co., Inc., licensee of Station WMSK-FM, Morganfield, Kentucky ("Petitioner"), proposing the substitution of Channel 237C3 for Channel 237A at Morganfield and the reallocation of Channel 237C3 from Morganfield to Corydon, Kentucky, as the community's first local transmission service, and the modification of the license for Station WMSK-FM to reflect the changes. Petitioner filed comments reiterating its intention to file an application for the channel and construct the facilities if the application is granted. A number of duplicate comments in opposition were filed by residents of Union County, location of Morganfield.

2. Petitioner filed this proposal for reallocation 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. 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.

3. In support of the petition, Petitioner states that its proposal will serve the public interest, it would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in Change of Community R&O. First, the allotment of Channel 237C3 at Corydon is mutually exclusive with the current use of Channel 237A at Morganfield. Second, the community of Morganfield (2000 U.S. Census population 1,581) would not be deprived of its only local service. Third, the proposal would provide a first local aural transmission service at Corydon, fulfilling Priority (3) of the FM

1 Morganfield and Corydon, Kentucky, 19 FCC Rcd 22656 (2004).
2 See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, ("Change of Community MO&O")5 FCC Rcd 7094 (1990).
3 See Revision of FM Assignment Policies and Procedures, 90 FCC2d 88, 91 (1988). 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)].
4 Petitioner notes that it currently holds a construction permit (File No. BPH-20010926AAD) to upgrade Station WMSK-FM to Channel 237C3 at Morganfield. It has not constructed that facility and has not filed an application for license to cover that permit.
5 Station WMSK(AM) will remain in Morganfield.

Allotment Priorities, which will result in a preferential arrangement of allotments over the retention of a second local transmission service at Morganfield, under Priority (4). In addition, Petitioner includes information regarding the gain and loss of service resulting from the upgrade and reallocation. It states that the proposed operation will result in a net gain in population of 132,373 persons within the 60 dBu signal strength contour of the station. It also states that there will be no loss area and no white or gray area created. Our engineering analysis shows that the gain area would be 2,287 square kilometers with a population of 129,403 persons, within which 7.3 square kilometers with a population of 104 persons would receive its fourth service, and an unpopulated area of 21.5 square kilometers would receive its fifth service. Our engineering analysis confirms Petitioner's representations that there will be no loss area and no white or gray area.

4. In further support of the reallocation, Petitioner states that Corydon is a community for allotment purposes, that it is not in any urbanized area, and that its proposed 70 dBu will cover less than 50 percent of any urbanized area.⁶ In support of its community status, Petitioner states that Corydon is an incorporated community with a 2000 U.S. Census population of 744 persons. It has its own zip code and post office. It has a mayor, city council, city attorney, town clerk, public works clerk and fire department. Further, Petitioner states that Corydon has numerous businesses, and eleven churches, many of which incorporate Corydon in their names.

5. In opposition, all of the commenters state that Union County is more deserving of a station than Henderson County, where Corydon is located. They argue that Union County should not be left with only an AM station with limited nighttime power while Henderson County will be served by four stations.⁷

6. We hereby grant the substitution of Channel 237C3 for Channel 237A at Morganfield, the reallocation of Channel 237C3 from Morganfield to Corydon, Kentucky, and the modification of the license for Station WMSK-FM to reflect the changes. We find that Corydon is a community for allotment purposes, and that the public interest will be served by an allotment there because it would provide Corydon with a first local aural transmission service which serves Priority (3), without depriving Morganfield of its sole local transmission service which serves Priority (4). Contrary to the oppositions' arguments, we consider service to the respective communities, and not to the counties in which the communities are located. Under Section 307(b) of the Communications Act, as amended, FM channels are allotted to communities, and the communities before us for consideration are Corydon and Morgan.

7. With respect to the remaining service at Morganfield, we consider daytime and full-time AM stations to be local aural transmission services,⁸ and thus, Morganfield retains a local service. We also note that, as we stated above, this proposal involves no loss area, and therefore, Morganfield will continue to receive reception service from Station WMSK-FM.

8. Channel 237C3 is reallocated at Corydon at petitioner's proposed site 11.1 kilometers (6.9 miles) southwest of the community.⁹

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

⁶ *See Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

⁷ Each comment, styled, "Petition to Deny Defective Response Request for Filing Window," is an exact copy of the other except for signature. No address is given on any of the comments.

⁸ *Change of Community MO&O*, 5 FCC Rcd 7094 (1990).

⁹ The coordinates for Channel 237C3 at Corydon 37-41-31 NL and 87-48-45 WL.

10. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective, August 11, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Morganfield, Kentucky	---
Corydon, Kentucky	237C3

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) the authorization of Union County Broadcasting Co., Inc., licensee of Station WMSK-FM, IS MODIFIED to specify operation at, subject to the following conditions:

- a) Within 90 days of the effective date of the *Order*, the licensee of Station WMSK-FM 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; and
- 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.

12. Pursuant to 47 C.F.R. Sections 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 in community of license and/or upgrade. As a result of this proceeding, Union County Broadcasting Co., Inc licensee of Station WMSK-FM is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the upgrade and change in community of license for Station WMSK-FM at the time its Form 301 application is submitted.

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

FEDERAL COMMUNICATIONS COMMISSION

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 Assistant Chief
 Audio Division
 Media Bureau