

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-108
Table of Allotments,)	RM-11178
FM Broadcast Stations.)	
(Andover and Haverhill, Massachusetts))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 17, 2006

Released: May 19, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking*¹ proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Beanpot Broadcasting Corp. (“Beanpot”), licensee of Station WXRV(FM), Channel 223B, Haverhill, Massachusetts, the *Notice* proposes to change the community of license for Station WXRV(FM) from Haverhill to Andover, Massachusetts. Beanpot’s request was filed 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 the opportunity to file competing expressions of interest in the proposed allotment.² Beanpot represents that if its request is granted, it will file an application to modify the facilities of Station WXRV(FM) to specify operation on Channel 223B at Andover, Massachusetts. Beanpot filed comments supporting the changes proposed in the *Notice*. No other comments were received.

2. Beanpot does not propose any change in the transmitter site for Station WXRV(FM), which is a pre-1964 station with grandfathered short-spacings that would not increase with the proposed change of community and the reallocation of Channel 223B at Andover.³ Under these circumstances, where no technical change is proposed and where no new short spacing would be created and no existing short-spacing would be exacerbated, our policy permits Station WXRV(FM) to change its community of license, although doing so would replace one short-spaced allotment with another.⁴

¹ *Andover and Haverhill, Massachusetts*, Notice of Proposed Rule Making, 20 FCC Rcd 6018 (MB 2005).

² *See Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ The following existing approved short-spacings would not change: Grandfathered pre-1964 short-spacings to FM Stations WPRO, Channel 222B, Providence, Rhode Island, WWYZ, Channel 223B, Waterbury, Connecticut, and WBOS, Channel 225B, Boston, Massachusetts; a grandfathered pre-1989 short-spacing to FM Station WUMB, Channel 220A, Boston, Massachusetts; and a short-spacing requested by FM Station WFEX, Channel 221A, Peterborough, New Hampshire, pursuant to section 73.215 of the Commission’s rules, 47 C.F.R. §73.215.

⁴ *See Killeen and Cedar Park, Texas*, Report and Order, 15 FCC Rcd 1945 (MMB 2000), and cases cited therein.

3. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵ Retention of Channel 223B at Haverhill would satisfy only the fourth allotment priority, “other public interest matters,” whereas the proposed reallocation of Channel 223B at Andover would satisfy the third allotment priority, “first local service.”⁶

4. Both Haverhill and Andover are located within the Boston Urbanized Area, and the 70 dBu signal contour of Station WXRV(FM) would continue to cover less than 50 percent of the urbanized area. Under the circumstances, no *Tuck* analysis is necessary.⁷

5. Andover is a town of 31,247 persons, deserving of its own local service. For all of the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 223B at Andover, Massachusetts. Channel 223B can be allotted at Andover in compliance with the minimum distance separation requirements of the Commission’s Rules at Station WXRV(FM)’s existing transmitter site. The reference coordinates for the allotment are 42-46-23 NL and 71-06-01 WL, with a site restriction of 13.1 kilometers (8.1 miles) north of Andover.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁸

7. 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), 0.283, and 1.420(i), IT IS ORDERED, That effective July 3, 2006, 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 Number</u>
Andover, Massachusetts	223B
Haverhill, Massachusetts	----

8. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Beanpot

⁵ 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 is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1982), *recon. denied*, 56 RR 2d 448 (1983).

⁶ Haverhill will continue to be served by Station WCCM(AM).

⁷ See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) (“*Tuck*”), and *East Los Angeles, Long Beach, and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864 (MMB 1995).

⁸ See 5 U.S.C. §801(a)(1)(A).

Broadcasting Corp., for Station WXRV(FM), Channel 223B, Haverhill, Massachusetts, IS MODIFIED to specify operation on Channel 223B at Andover, Massachusetts, 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 47 C.F.R. 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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

9. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), Beanpot Broadcasting Corp., licensee of Station WXRV(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

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

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036

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

12. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau