

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	MB Docket No. 03-219
(Statesville and Clemmons,	)	RM-10797
North Carolina, Iron Gate, Virginia)	)	RM-11094

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: January 4, 2006**

**Released: January 6, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rulemaking* issued at the request of Mercury Broadcasting Company, Inc., licensee of Station WFMX(FM), Statesville, North Carolina (“Petitioner”). Petitioner proposes the substitution of Channel 289C1 for Channel 289C at Statesville, reallocation of Channel 289C1 from Statesville to Clemmons, North Carolina, as the community’s first local transmission service, and the modification of the license for Station WFMX (FM) to reflect the changes. Petitioner filed comments in support of its proposal and pledged to file the necessary applications to effectuate the proposed changes. Dick Broadcasting Company of Tennessee (“Dick”), licensee of Stations WKZL(FM), Winston-Salem, North Carolina, and WKRR(FM), Asheboro, North Carolina, filed Comments and Counterproposal.<sup>1</sup> Petitioner filed Reply Comments in response to Dick’s Comments and Counterproposal. No other comments were filed.

2. **Background.** 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.<sup>2</sup> 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.<sup>3</sup>

3. In its comments, Dick argues that Petitioner’s proposal should be denied. Dick alleges that the community of Clemmons does not deserve a first local service preference pursuant to *Faye and Richard Tuck, Inc. (“Tuck”)*<sup>4</sup> because Clemmons is part of and dependent on the Urbanized Area of Winston-Salem, North Carolina. Dick claims that Statesville is a rural community and that the public

<sup>1</sup> See *Public Notice*, Report No. 2674 (released October 5, 2004).

<sup>2</sup> 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*, 5 FCC Rcd 7094 (1990).

<sup>3</sup> 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)].

<sup>4</sup> See *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988).

interest would be better served if Statesville retains Station WFMX's local service. However, in the alternative, should the Commission decide that Clemmons is an independent community, Dick proposes the allotment of Channel 289A at Iron Gate, Virginia, as the community's first local aural transmission service, and the substitution of Channel 289C1 for Channel 289C and reallocation of Channel 289C1 from Statesville to Clemmons using Station WFMX's authorized site, rather than the site Petitioner requests in its petition for rulemaking.

4. Petitioner responds by arguing that Dick's counterproposal is defective because it imposes a downgrade and site restriction on it without its consent and it objects to use of the site suggested by Dick. In its reply comments, however, Petitioner suggests that one of three alternate channels be allotted at Iron Gate to accommodate Dick's expression of interest.<sup>5</sup>

5. **Discussion.** We will grant the petition. We find that Clemmons is an independent community deserving of an allotment as a first local aural transmission service. We disagree that Dick's counterproposal is defective. Dick's proposal for Iron Gate is mutually exclusive with Petitioner's proposed use of Channel 289C1 at Clemmons, and is thus a valid counterproposal. However, Dick attempts to remove the mutual exclusivity by suggesting an alternate site for the use of Channel 289C1 at Clemmons. Petitioner has objected to the use of the channel at that site, and we will not impose a downgrade and site restriction on a station without its consent.<sup>6</sup> In any event, since Petitioner has suggested the use of Channel 270A as an alternate channel at Iron Gate, and our analysis confirms that Channel 270A would comply with our rules, we will allot a channel to each community.

6. We find that Clemmons, which is located in the Winston-Salem Urbanized Area, is an independent community for allotment purposes. The Village of Clemmons is in the U.S. Census with a population of 13,827 persons, and was incorporated in 1986. It fulfills a majority of the factors which establish its independence of the Urbanized Area in accordance with the factors delineated in *Tuck*.<sup>7</sup> We have applied this analysis because Station WFMX(FM) is moving from Statesville, which is outside any Urbanized Area, to Clemmons, which, as stated above, is part of the Urbanized Area of Winston Salem.

7. Clemmons meets factor (1), because the 2000 U.S. Census shows that 18.2% of Clemmons residents work in Clemmons rather than the larger community.<sup>8</sup> It fulfills Factor (2) because Clemmons has its own paper, the *Clemmons Courier*, and Clemmons has its own website. It also meets Factor (3) because there is sufficient evidence that Clemmons is perceived as being separate from Winston-Salem. The community has a history dating to 1802, it was incorporated as a community in

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<sup>5</sup> Petitioner suggests the use of Channels 240, 252 and 270.

<sup>6</sup> See *Mt. Norris and Savanna, Illinois, Belle Plaine, Maquoketa, Webster City and Winterset, Iowa*, 5 FCC Rcd 2683 MMB 1990) *Claremore, Locust Grove and Nowata, Oklahoma, and Barling, Arkansas*, 3 FCC Rcd 4037 (MMB 1988).

<sup>7</sup> See *Tuck*, 3 FCC Rcd 5374 (1988). The Commission considers the following factors in determining a community's interdependence with a central city: (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 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) whether the smaller community has its own zip code or telephone book provided by the local telephone company; (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 extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Tuck*, 3 FCC Rcd at 5378.

<sup>8</sup> See, e.g., *Anniston and Ashland, Alabama, and College Park, Georgia, et al.*, 16 FCC Rcd 3411; *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996).

1986, and is in the U.S. Census. Petitioner includes a statement by the mayor of Clemmons attesting to his perception that the community is distinct. Clemmons fulfills factor (4) because it has its own elected Council/Manager form of government with an elected mayor and five council members. The community provides many services, and has an operating budget of approximately \$3 million. It meets one prong of factor (5) because it has its own zip code, but no local phone book, but it does have separate government listings in the Winston-Salem phone book. It meets part of factor (6) because it has businesses and churches, including some medical offices, but it does not have health facilities such as hospitals and does not have a municipal transportation system. Under factor (7), there is evidence of a separate print advertising market with the local newspaper, and there are advertising opportunities through the community's website. Clemmons does not fulfill factor (8) because it relies on Forsyth County and Winston-Salem for municipal services, including police, fire protection, schools, and libraries.

8. Channel 289C1 can be reallocated at Clemmons at Petitioner's requested site 32 kilometers (19.9 miles) north of the community.<sup>9</sup> Petitioner's proposal will serve the public interest and meets the requirements for reallocation set forth in *Change of Community R&O*. First, the allotment of Channel 289C1 at Clemmons is mutually exclusive with the current use of Channel 289C at Statesville. Second, the community of Statesville will not be deprived of its only local service.<sup>10</sup> Third, the proposal would provide a first local aural transmission service at Clemmons, population 13,827 persons (2000 U.S. Census), which will fulfill priority (3) of the allotment priorities, and result in a preferential arrangement of allotments over the retention of a fourth local transmission service at Statesville, population 23,320 persons (2000 U.S. Census) which would fulfill priority (4). Finally, the reallocation will result in the elimination of existing short-spacings to two other stations.<sup>11</sup> We note that the reallocation and downgrade will result in a net loss of service to 1,256,031 persons in an area of 5,849 square kilometers within the station's 60dBu contour. However, we have determined that over 400,000 persons will receive a new service, and the entire loss area will remain well served. In fact, the vast majority of the loss area receives signals from 8 to 14 FM stations, and several AM stations, as well.

9. We will allot Channel 270A at Iron Gate, Virginia, and find that it is a community for allotment purposes. Iron Gate is outside any Urbanized Area. It was incorporated in 1890, and is listed in the U.S. Census with a population of 404 persons. It has an elected government with a mayor and town council, and employs a town clerk and treasurer. It is home to churches, businesses, a volunteer fire department and the Iron Gate Gorge, a recreational attraction. Channel 270A can be allotted at Iron Gate with a site restriction of 1.5 kilometers (0.9 miles) northwest of the community.<sup>12</sup>

10. 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, *see* 5 U.S.C. §801(a)(1)(A).

11. 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 February 21, 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:

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<sup>9</sup> Channel 289C1 can be allotted at Clemmons at coordinates 36-17-30 NL and 80-15-30 WL.

<sup>10</sup> Stations WAME(AM), WSIC(AM), and WKKT(FM) will remain in Statesville.

<sup>11</sup> The first short spacing involves a pre-1964 grandfathered short-spacing to Station WFJA(FM) Channel 288A, Sanford, North Carolina, and the second involves a short -spacing created pursuant to Section 73.215 by Station WZNY(FM), Channel 289C, Augusta, Georgia.

<sup>12</sup> Channel 270A can be allotted at Iron Gate at coordinates 37-48-14 NL and 79-48-23 WL.

Community

Channel

Statesville, North Carolina  
Clemmons, North Carolina  
Iron Gate, Virginia

245C  
289C1  
270A

12. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.
13. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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