

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 03-257
Table of Allotments,)	RM-10814
FM Broadcast Stations.)	
(Hartford and South Haven, Michigan))	

**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 considers herein the *Notice of Proposed Rule Making* (“*Notice*”),¹ issued at the request of WSJM, Inc. (“Petitioner”), licensee of Station WZBL(FM), Channel 279A, Hartford, Michigan and Station WCSY-FM, Channel 252A, South Haven, Michigan. Petitioner filed comments. No counterproposals or other comments were received in response to this proceeding.

2. **Background.** The *Notice* proposed the reallocation of pre-1989 grandfathered Station WCSY-FM, Channel 252A from South Haven to Hartford, Michigan, relocation of transmitter site and modification of the Station WCSY-FM license accordingly. In this regard, the *Notice* requested the Petitioner to submit a gain and loss study for Station WCSY-FM because the station is relocating its transmitter site. Currently, Station WCSY-FM has pre-existing grandfathered short-spacings with Station WLSC, Channel 252A, North Muskegon, Michigan and Station WNWN-FM, Channel 253B, Coldwater, Michigan pursuant to Section 73.213(c)(1) of the Commission’s rules. The proposed Hartford reallocation will allow Station WCSY-FM to move to a fully-spaced transmitter site that eliminates the pre-existing short-spacings, thereby, conforming to the requirements of Section 73.207 of the Commission’s rules. Moreover, the proposed Hartford reallocation will permit Station WCSY-FM to increase its effective radiated power (“ERP”) from 1.9 kilowatts to 6 kilowatts at 100 meters height above average terrain (“HAAT”).

3. To facilitate the proposed Hartford reallocation, the *Notice* also proposed the reallocation of pre-1989 grandfathered Station WZBL(FM), Channel 279A from Hartford to South Haven, Michigan and modification of the Station WZBL(FM) license accordingly. Station WZBL(FM) is a pre-1989 grandfathered station licensed to Hartford, with a non-directional ERP of 3 kilowatts at 100 meters HAAT. Station WZBL has pre-existing grandfathered short-spacings with respect to Station WXSS, Channel 279B, Wauwatosa and Station WRBR-FM, Channel 280A, South Bend, Indiana pursuant to Section 73.213(c)(1) of the Commission’s rules.

4. Petitioner filed comments, stating that its proposal will not create *any* new short-spacings or interference different from that which already exists in the present allotments. Moreover, Petitioner states that it is in public interest because the reallocations result in a preferential arrangement of allotments by allowing the station WCSY-FM to provide an improved broadcast service to the public. In response to the

¹ See *Hartford and South Haven, Michigan*, 18 FCC Rcd 26548 (MB 2005).

Notice, Petitioner submitted an engineering statement demonstrating that the proposed Station WCSY-FM reallocation to Hartford results in a net gain of service to 54,617 persons, an 82.9 percent increase, while the loss area contains 5,563 persons that will continue to receive reception service from five or more aural services.

5. **Discussion.** Petitioner filed its request pursuant to 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 without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.² The proposed reallocation of Channel 252A at Hartford is mutually exclusive with the current authorized facilities of Station WCSY-FM, Channel 252A, South Haven, Michigan. Additionally, the proposed reallocation of Channel 279A at South Haven is mutually exclusive with the current authorized facilities of Station WZBL(FM), Channel 279A, Hartford, Michigan.

6. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.³ As such, we will consider the reallocation proposals based on priority (4) considerations.

7. Accordingly, we will reallocate Station WCSY-FM, Channel 252A from South Haven to Hartford, Michigan, change the station's coordinates and modify the Station WCSY-FM to reflect Hartford as its community of license in compliance with the spacing requirements of Section 73.207 of the Commission's rules. As a result, Station WCSY-FM will no longer maintain its grandfathered status because of its conformity with the current 73.207 spacing requirements. Under these circumstances, we will extend our policy to permit pre-1989 grandfathered stations to change their community of license and transmitter site to comply with 73.207 spacing requirements.⁴ The Hartford reallocation will enable Station WCSY-FM to increase its ERP to 6 kilowatts at 100 meters HAAT. The proposed 70 dbu contour for Station WCSY-FM at Hartford will provide coverage to 118,651 persons, a net gain of 59,158 persons. The loss area is considered well-served with at least five aural services.

8. To accommodate the Station WCSY-FM reallocation, we will reallocate Station WZBL(FM), Channel 279A from Hartford to South Haven, Michigan and modify the Station WZBL(FM) license accordingly.⁵ Station WZBL will continue to operate as a grandfathered station at its current authorized site, with an ERP of 3 kilowatts at 100 meters HAAT. Station WZBL(FM) at South Haven will maintain the pre-existing grandfathered short-spacings with Station WXSS, Channel 279B, Wauwatosa and Station WRBR-FM, Channel 280A, South Bend, Indiana pursuant to Section 73.213(c)(1) of the Commission's rules. These pre-existing short-spacings will not be exacerbated.

9. To prevent removal of Hartford's sole local service, Station WCSY-FM must implement new licensing facilities at Hartford prior to the licensing of Station WZBL(FM) at South Haven, Michigan.

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

³ 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 priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁴ *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (MMB 1999).

⁵ *Id.*

10. A staff engineering analysis has determined that Channel 252A can be reallocated to Hartford, Michigan in conformity with the Commission's rules, provided there is a site restriction of 12.5 kilometers (7.8 miles) northwest of Hartford at coordinates 42-14-49 NL and 86-20-06 WL. The Station WCSY-FM reallocation covers 11.43 percent of the Benton Harbor-St. Joseph, Michigan Urbanized Area. Therefore, a *Tuck* showing is not required.⁶

11. Additionally, Channel 279A can be reallocated to South Haven, Michigan using the Station WZBL(FM) authorized site, 42-18-02 NL and 86-15-03 WL. The transmitter site is located 11.2 kilometers (6.9 miles) south of South Haven, Michigan.

12. 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).

13. 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:

<u>Communities</u>	<u>Channel No.</u>
Hartford, Michigan	252A
South Haven, Michigan	279A

14. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of WSJM, Inc. for Station WCSY-FM, Channel 252A, South Haven, Michigan, IS MODIFIED to specify operation on Channel 252A at Hartford, Michigan, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station WCSY-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 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.

d) Operation of Station WCSY-FM on Channel 252A at Hartford, Michigan, including program test operation pursuant to 47 C.F.R. Section 73.1620, will not be permitted until Station WZBL(FM) activates service on Channel 279A at South Haven, Michigan.

⁶ See *Headland, Alabama, and Chattochochee, Florida*, 10 FCC Rcd 10352 (1995); see also *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

15. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of WSJM, Inc. for Station WZBL(FM), Channel 279A, Hartford, Michigan, IS MODIFIED to specify operation on Channel 279A at South Haven, Michigan at coordinates 42-18-02 NL and 86-15-03 WL subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station WZBL(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 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.

16. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, WSJM, Inc., licensee of Station WZBL(FM), Channel 279A, Hartford, Michigan and Station WCSY-FM, Channel 252A, South Haven, Michigan., is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for Station WZBL(FM) to specify operation on Channel 279A at South Haven, Michigan and Station WCSY-FM to specify operation on Channel 252A at Hartford, Michigan at the time its Form 301 application is submitted.

17. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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