

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-377
FM Table of Allotments,	)	RM-11077
FM Broadcast Stations.	)	
(Dover and North Canton, Ohio)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: April 12, 2006**

**Released: April 14, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*<sup>1</sup> issued at the request of Clear Channel Broadcasting Licenses, Inc. (“Petitioner”), licensee of Station WJER-FM, Channel 269A, Dover, Ohio. Petitioner proposes to reallocate Channel 269A from Dover to North Canton, Ohio, and modify the license of Station WJER-FM to reflect the change of community. Petitioner filed comments reiterating its intention to file an application for a construction permit to effectuate the change of community if Channel 269A is reallocated. Edward J. Cox II (“Cox”) filed a letter objecting to the proposed reallocation.<sup>2</sup> No counterproposals were filed.

2. Petitioner filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission’s Rules,<sup>3</sup> 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>4</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.<sup>4</sup>

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<sup>1</sup> *Louisburg and Hillsborough, North Carolina, et al.*, 19 FCC Rcd 18738 (MB 2004) (“*Notice*”) (This was a multiple docket *Notice* setting forth several separate proposals while the instant Report and Order pertains only to the docket specified above.).

<sup>2</sup> There was no indication that Cox served the Petitioner with a copy of his letter as required by Section 1.420(a) of the Commission’s Rules and therefore cannot be considered in resolving this proceeding. 47 C.F.R. § 1.420(a). Even if the letter had been served on the Petitioner, it does not provide any basis to deny this proposal. In a similar vein, we dismiss a “Petition” which consisted of signatures, addresses, and telephone numbers of twelve Dover residents who were opposed to the reallocation. We will not consider the Petition because it was filed past the reply comment deadline, was not a part of the record, and did not indicate proper service.

<sup>3</sup> 47 C.F. R. § 1.420(i).

<sup>4</sup> 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 7094 (1990).

3. In opposition, Cox argues that the proposed reallocation would reduce local news coverage of Tuscarawas County that is currently provided by four radio stations. Cox also argues that the proposed reallocation will shift the emphasis from serving a rural area to the wealthier Canton, Ohio area. As stated earlier, there is no indication that Cox served the Petitioner. Even if Cox had served the Petitioner, we would have rejected Cox's speculative arguments and found that the proposed reallocation of WJER-FM to North Canton would result in a preferential arrangement of allotments. The proposal would provide a first local service at North Canton (with a 2000 U.S. Census population of 16,369 persons) under Priority Three which would result in a preferential arrangement of allotments over the retention of a second local service at Dover (with a 2000 U.S. Census population of 12,210 persons) under Priority Four.<sup>5</sup> Our staff engineering analysis shows that there will be a predicted net gain in service to 409,976 persons, and that both the gain and loss areas are well-served with 5 or more full-time reception services.<sup>6</sup>

4. We recognize that the proposed WJER-FM 70 dBu signal at North Canton will cover 100 percent of the Canton Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we do not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban community and central city, and most important of all, the independence of the suburban community.<sup>7</sup> In *Faye and Richard Tuck, Inc.*, we set forth eight factors to assess the independence of a suburban community.<sup>8</sup> Each of the eight *Tuck* factors, is addressed by the Petitioner, to demonstrate the independence of North Canton. The City of North Canton was incorporated in 1961 and is governed by an elected mayor and city council (Factor 4). The city provides municipal services such as police, fire, and emergency services, and administers the North Canton City School District (Factor 8). North Canton is described as a "proud and prosperous community" by its mayor (Factor 3) with numerous businesses and health

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<sup>5</sup> Station WJER(AM) will continue to provide local service to Dover. As stated in the *Notice*, The AM Station is operated by Petitioner pursuant to a "dual city" license with Dover and New Philadelphia, Ohio as the communities of license.

<sup>6</sup> See *LaGrange and Rollingwood, Mississippi*, 10 FCC Rcd 3337 (1995). See also *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm. Nov. 29, 1983) (The Commission has considered five or more services to be "abundant.").

<sup>7</sup> *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (MMB 1995).

<sup>8</sup> 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 large 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 the 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.

facilities including North Canton Heating and Cooling and North Canton Health Center, and is home to the Hoover Company (Factor 6). Petitioner states that North Canton's population is 20.3 percent of Canton's (80,806) population and that 23 percent of employed individuals in North Canton work at their place of residence (Factor 1) according to the 2000 U.S. Census. North Canton has three zip codes and two U.S. Postal Service offices but does not have a separate telephone directory (Factor 5). Local news events are covered by *Our Town North Canton*, a monthly publication that also provides local advertising (Factors 2 and 7). We find that a majority of the *Tuck* factors are present to establish North Canton's independence from the Canton Urbanized Area.<sup>9</sup>

5. Our staff engineering analysis shows that Channel 269A can be reallocated from Dover to North Canton, Ohio in conformity with the technical requirements of the Commission's Rules at coordinates located 40-48-30 North Latitude and 81-23-31 West Longitude with a site restriction of 7.5 kilometers (4.7 miles) south of the community. Since North Canton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. For all the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 269A to North Canton, Ohio. Therefore, in accordance with the provisions of 47 C.F.R. Section 1.420(i), we will modify the license of Station WJER-FM, Channel 269A, Dover, Ohio to specify operation on Channel 269A at North Canton, Ohio. 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. Section 801(a)(1)(A).

6. Accordingly, pursuant to authority contained 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 May 30, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Dover, Ohio	---
North Canton, Ohio	269A

7. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Clear Channel Broadcasting Licenses, Inc., for Station WJER-FM, Channel 269A, Dover, Ohio, IS MODIFIED to specify operation on Channel 269A, North Canton, Ohio, 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

<sup>9</sup> *See e.g. Parker, Arizona, et al.*, 20 FCC Rcd 12197 (MB 2005) (change of community granted where proposed 70 dBu signal would cover 100% of an Urbanized Area because majority of *Tuck* factors show independence of community from Urbanized Area, and that the change of community is entitled to first local preference).

- 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.

8. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), Clear Channel Broadcasting Licenses, Inc., licensee of Station WJER-FM, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Station WJER-FM at the time its Form 301 application is submitted.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Report and Order to Petitioner's counsel, as follows:

Clear Channel Broadcasting Licenses, Inc.  
c/o Mark N. Lipp, Esq.  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave., N.W.  
Suite 600  
Washington, D.C. 20004-6500

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

11. For additional information concerning this proceeding, contact Helen McLean, Media Bureau (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau