

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.
(Churchville and Keswick, Virginia and
Marlinton, West Virginia)
MB Docket No. 05-292
RM-11281

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 3, 2006

Released: May 5, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the Notice of Proposed Rule Making ("Notice") issued in response to a Petition for Rule Making filed on behalf of Force 5 Communications, LLC ("Petitioner"), licensee of FM Station WBOP, Channel 292B1, Churchville, Virginia. Petitioner proposes to allot Channel 292A to Marlinton, West Virginia, as its first local aural transmission service. Petitioner also seeks to substitute Channel 291A for Channel 292B1, Station WBOP, reallocate Channel 291A from Churchville to Keswick, Virginia, and to modify Station WBOP's license accordingly. Petitioner filed comments and reply comments in which it reiterates its intent to effectuate its proposal. Mr. Al P. Saufley also filed comments. No other comments or counterproposals have been filed. For the reasons stated below, we grant Petitioner's rulemaking requests.

2. Petitioner asserts that the Commission's FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures would be served because Petitioner would provide first local aural transmission services (priority (3) of the FM allotment priorities) at Marlinton, West Virginia and Keswick, Virginia, each of which qualifies as a community to which an FM allotment can be made. In addition to providing a first local aural transmission service (priority (3)) to Marlinton, the proposed Marlinton allotment will provide a first aural reception service (priority (1)) to 72 persons, a second aural reception service (priority (2)) to 1,335 persons, a third such service to 1,001 persons, and a fourth such service to 4,200 persons. Accordingly, we allot Channel 292A to Marlinton, West Virginia.

1 Churchville and Keswick, Virginia, and Marlinton, West Virginia, Notice of Proposed Rule Making, 20 FCC Rcd 16346 (MB 2005).

2 Mr. Saufley is concerned that the "oldies" music format broadcast on Station WBOP will no longer be heard in Churchville if Station WBOP moves to Keswick. The Commission does not regulate entertainment formats. See GAF Broadcasting Company, Inc., Memorandum Opinion and Order, FCC Rcd 3225, 3226 (1992). Thus, Mr. Saufley's concern is irrelevant in determining whether Petitioner's proposed change in community of license serves the public interest and his comments are denied.

3 Second Report and Order, 90 FCC 2d 88 (1982). The 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. Equal weight is given to priorities (2) and (3).

3. In order to accommodate the Marlinton allotment, Petitioner proposes to substitute Channel 291A for Channel 292B1, Station WBOP, and reallocate Channel 291A from Churchville to Keswick, Virginia. Petitioner makes the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's Rules,⁴ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ In this instance, the reallocation will allow the establishment of a first local transmission service by Petitioner at Keswick, Virginia. Provision of first local service falls under priority (3) of the FM allotment priorities and is preferred to the providing of a second local service to Churchville, Virginia, which falls under priority (4) of the FM allotment priorities. Since the proposed Channel 291A allotment at Keswick would provide a 70 dBu contour over the entire Charlottesville, Virginia Urbanized Area, Petitioner is required to submit a *Tuck* showing demonstrating that Keswick is independent of that urbanized area and therefore is entitled to consideration as providing a first local service to Keswick.⁶ Petitioner submitted a *Tuck* analysis demonstrating that Keswick is independent of the Charlottesville Urbanized Area. In light of all the relevant factors in this case, we find that changing the community of license of Station WBOP from Churchville to Keswick, Virginia, is in the public interest. Further, the allotment of Channel 291A to Keswick would not deprive Churchville of its sole local transmission outlet, because Churchville will retain local service from AM Station WNLR. Therefore, we grant Petitioner's reallocation proposal.

4. Consistent with the technical requirements of the Commission's Rules, Channel 292A can be allotted to Marlinton, West Virginia, utilizing coordinates of 38-13-24 NL and 80-05-41 WL, and Channel 291A can be allotted to Keswick, Virginia, utilizing coordinates of 38-01-48 NL and 78-22-55 WL, with a site restriction of 2.1 kilometers (1.3 miles) northwest of Keswick.

5. 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).

6. Accordingly, pursuant to the 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 June 19, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

⁴ 47 C.F.R. § 1.420(i).

⁵ *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).

⁶ *See Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374; *see also Headland, Alabama and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (1995) (a reallocation proposal that seeks a preference for providing a first local aural transmission service to a community must submit a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area.)

<u>Community</u>	<u>Channel Number</u>
Churchville, Virginia	-----
Keswick, Virginia	291A
Marlinton, West Virginia	292A

7. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Force 5 Communications, LLC IS GRANTED.

8. IT IS FURTHER ORDERED, That the comments filed by Mr. Al P. Saufley ARE DENIED.

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of 5 Force Communications, LLC for Station WBOP(FM), Churchill, Virginia, IS MODIFIED to specify operation on Channel 291A at Keswick, Virginia, 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.

10. Pursuant to 47 C.F.R. Section 1.1104(3)(1), Force 5 Communications, LLC, licensee of Station WBOP(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for Station WBOP(FM), Channel 292B1, from Churchill, Virginia, to Channel 291A, Keswick, Virginia, at the time it submits its Form 301 application.

11. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

12. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
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Media Bureau