

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

MM Docket No. 84-231

In the Matter of

Implementation of BC Docket
No. 80-90 to Increase the
Availability of FM Broadcast
Assignments.

MEMORANDUM OPINION AND ORDER

Adopted: February 1, 1990; Released: February 20, 1990

By the Commission:

1. This Memorandum *Opinion and Order* responds to a portion of the decision of the United States Court of Appeals in *Reeder v. FCC*, 865 F.2d 1298 (D.C. Cir. 1989). In that decision, the court addressed a number of appeals of our actions in MM Docket 84-231. In this document, we address the court's action vacating and remanding a specific FM channel allotment made to Semora, North Carolina, for further proceedings to address the questions of whether Semora is a community for allotment purposes, and whether Semora should be accorded a dispositive first local service preference as against a competing allotment proposal for South Boston, Virginia.¹ We find that Semora is a community for allotment purposes, but we do not reach the question of whether Semora should be accorded a dispositive first local service preference, as an alternative channel is available for allotment to South Boston.

BACKGROUND

2. In the *Notice of Proposed Rule Making* in Docket 84-231,² the Commission proposed allotting Channel 294A to South Boston, Virginia, as that community's second local FM station. Ansun Broadcasting Company ("Ansun") filed a mutually exclusive counterproposal to allot Channel 294A to Semora, North Carolina, as that community's first local FM station. Roxboro Broadcasting Company ("Roxboro") and LCH Broadcasting Group ("LCH") filed oppositions to the counterproposal. Roxboro argued that Semora did not constitute a community for allotment purposes. The Commission allotted the channel to South Boston, stating that the Semora allotment would be short-spaced to an allotment at Salisbury, North Carolina.³ Ansun filed a petition for reconsideration of the decision, and Roxboro filed an opposition. On reconsideration, the Commission reversed its earlier decision and allotted Channel 294A to Semora with a site restriction to prevent short-spacing to the Salisbury channel.⁴ The Commission did not discuss the community status issue raised by Roxboro. LCH and Roxboro filed petitions for reconsideration of the decision to allot the channel to Semora, arguing that Semora was not a com-

munity, and, if Semora was found to be a community, that it did not warrant a dispositive first local service preference as against South Boston under the Commission's "quiet village" doctrine.⁵ Ansun filed an opposition to the petitions, and Roxboro filed a reply. We affirmed our decision, finding Semora to be a community.⁶

3. Roxboro and LCH appealed the Commission's decision to the Court of Appeals, arguing that the Commission did not address its claims that Semora was not a community and, if Semora was a community, that it was not entitled to a Section 307(b) preference over South Boston. The court found that the Commission did not address the contention that the services in Semora are not aimed primarily at Semora residents but at a larger geographic area, and are therefore insufficient under applicable precedent to prove community status. Furthermore, the court stated that the Commission failed to consider the applicability of the quiet village doctrine.⁷ As a result, the court vacated the decision granting an allotment to Semora and remanded the case to the Commission for further consideration.

DISCUSSION

4. After further review and careful consideration of the record in this case, we are convinced that Semora, North Carolina, is a community for allotment purposes. The Commission's policy is that, if a community is not incorporated or listed in census reports, the proponent of an allotment must show the place to be a geographically identifiable population grouping.⁸ The proponent need not show that the borders of the locality are precisely ascertainable. Instead, what must be shown is that residents of the locality are commonly regarded as a distinct group. This can be proven by the "testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'". *Beacon*, 2 FCC Rcd at 7562 [emphasis in original]. Examples of objective indications of community status include the existence of political, commercial, social and religious organizations and services in the community. Another indication of community status is "whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce."⁹

5. Although not listed in the census reports, Semora has an estimated population of 150.¹⁰ The Commission has allotted channels in the past to communities with lesser populations.¹¹ Furthermore, Semora is not a small municipality on the fringe of a larger urban area. In many of the cases in which the Commission has determined that a municipality is not a community for allotment purposes, the finding was directly related to the proximity of that municipality to a larger metropolitan area.¹² Such cases are distinguishable from instances in which, as here, a petitioner seeks to establish the community status of a more isolated municipality.¹³

6. The record indicates that objective indicia of community status are present in Semora. Ansun submitted various items in support of its claim, such as a map showing Semora's location, receipts from local businesses giving an address of Semora, and photographs of local churches. Semora has its own post office and local volunteer fire department. A civic organization (the Semora Ruritan Club) and two churches, both of which have Semora in their names, are located in the town. The presence of

social and religious organizations suggest that they exist for the good of community residents, and not for the benefit of individuals who are "just passing through". Semora also evidences commercial activity. The town supports several stores, two restaurants, and a night club. While the amount of commercial activity in the town is limited, the Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community. Furthermore, the fact that persons from outside of Semora may participate in commercial activities in the community does not foreclose a finding of community status, but instead serves as evidence that persons from surrounding areas view Semora as a center of business activities for a surrounding area. Each of the above factors in isolation would not necessarily make an area a community. However, when viewed together, the factors are strong evidence of the existence of a community.¹⁴

7. Ansun submitted a petition signed by a number of individuals attesting to their belief that Semora is a community.¹⁵ In addition, letters were submitted from the Caswell County Chamber of Commerce, the Semora Ruritan Club, the Semora Volunteer Fire Department, and the County Manager of Caswell County, all of which support the contention that Semora is a community. The petition and letters constitute evidence of the subjective belief of area residents that Semora is a community.

8. Semora has no local government and provides no municipal services except for its volunteer fire department. Residents rely on the county to provide police and schools. This arrangement does not preclude finding that Semora constitutes a community. There could be any number of reasons as to why such services are provided on a county-wide as opposed to a local basis. Semora is a small community and the population may not be able to maintain an effective local police force and school district. We do not believe, however, that we should find that no community exists simply because the community is small. Moreover, the Commission does not require a municipality to provide every public service on its own in order to merit community status.¹⁶ Similarly, the absence of a newspaper or a bank is not fatal to community status.

9. In sum, we believe that the objective indicia of community status, along with the subjective views expressed in the letters and petition, are sufficient to prove that Semora is a community for allotment purposes.

10. Our staff engineering analysis has determined that there is another available channel for use at South Boston to resolve the conflicting proposals in this proceeding. Channel 237A can be allotted to South Boston, Virginia, as that community's second local FM service,¹⁷ thereby allowing Channel 294A to remain at Semora, North Carolina, as that community's first local service. As a result, we need not engage in a comparative analysis to determine if either community is entitled to a Section 307(b) preference. Therefore, it is unnecessary to reach the question of whether the quiet village doctrine applies in this case, and, if so, whether the doctrine would preclude giving Semora a dispositive preference over South Boston. Each community will receive a Class A station as requested by the petitioners in this proceeding.

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 9, 1990, the FM Table of

Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel Number
South Boston, Virginia	237A, 248C1

12. The window period for filing applications for Channel 237A at South Boston, Virginia, will open on **April 10, 1990**, and close on **May 10, 1990**.

13. IT IS ALSO ORDERED, That the *Memorandum Opinion and Order* in MM Docket 84-231, insofar as it allotted Channel 294A to Semora, North Carolina, IS AFFIRMED.

14. For further information concerning this proceeding, contact Michael Ruger, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ We are addressing other actions taken by the court in separate documents.

² 49 Fed. Reg. 11214 (1984).

³ *First Report and Order* in MM Docket 84-231, 100 FCC 2d 1332 (1985).

⁴ *Memorandum Opinion and Order* in MM Docket 84-231, 59 RR 2d 679 (1985).

⁵ The quiet village doctrine states that, under certain circumstances, a decisive 307(b) preference will not be given to an exceedingly small community proposing first local service in a comparative proceeding. See, e.g., *Beacon Broadcasting*, 2 FCC Rcd 3469, 3471-72 (1987), *recon. denied*, 2 FCC Rcd 7562 (1987).

⁶ *Second Memorandum Opinion and Order* in MM Docket 84-231, 61 RR 2d 26 (1986).

⁷ *Reeder*, 865 F.2d at 1305-1306.

⁸ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982).

⁹ See *Mighty-Mac Broadcasting Co.*, 58 RR 2d 599, 603 (1985); *North Naples, Florida*, 41 RR 2d 1549, 1551 (1977).

¹⁰ This is the population listed in the 1988 *Rand McNally Commercial Atlas and Marketing Guide*.

¹¹ See *Seven Locks Broadcasting Co.*, 37 FCC 82, 83 (1964) (existing communities with as few as 30 persons have received allotments).

¹² See, e.g., *Penacook, New Hampshire*, 2 FCC Rcd 459 (1987) (Penacook determined to be a part of two nearby communities); *Coker, Alabama*, 43 RR 2d 190 (1978) (Coker located 10 kilometers from Tuscaloosa); *Vimville, Mississippi*, 55 RR 2d 256 (1983) (Vimville located next to Meridian); *Oak Beach and Bay Shore, New York*, 57 RR 2d 1235 (1985) (Oak Beach considered a part of Babylon, New York).

¹³ The Court of Appeals has recognized that the Commission may define the term "community" differently in different contexts, and may adopt an interpretation that does not necessarily depend upon purely political boundaries. *Winter Park Commu-*

nications v. FCC, 873 F.2d 347 (D.C. Cir. 1989), *cert. granted on other grounds sub nom. Metro Broadcasting, Inc. v. FCC*, 58 U.S.L.W. 3427 (U.S. Jan. 9, 1990) (No. 89-453).

¹⁴ See *Teche Broadcasting Corp.*, 52 FCC 2d 970, 973 (Rev. Bd. 1975) (test for community status encompasses consideration of the totality of the circumstances).

¹⁵ A number of the parties who signed the petition list their mailing addresses as Semora.

¹⁶ *Cf. Faye and Richard Tuck*, 3 FCC Rcd 5374, 5378 (1988) (manner in which public goods are provided is relevant to 307(b) inquiries, but probative value of the evidence with respect to a specific municipality depends on evidence as to how other nearby and similarly situated municipalities obtain public goods).

¹⁷ The city reference coordinates are 36-42-00 and 78-54-12.