

FCC MAIL SECTION

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

APR 26 3 05 PM '93

DISPATCHED BY MM Docket No. 92-252 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8099
 Table of Allotments,
 FM Broadcast Stations.
 (Leesburg and Tavares, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 6, 1993; Released: April 26, 1993

By the Chief, Allocations Branch:

1. At the request of J. J. Taylor Companies, Inc. ("Taylor"), licensee of Station WXXL(FM), Channel 294C1, Leesburg, Florida, the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 7570 (1992), proposing the reallocation of Channel 294C1 from Leesburg, Florida to Tavares, Florida, as that community's first local service. Petitioner also requests the modification of its license for Station WXXL(FM) to specify Tavares, Florida, as its community of license. Taylor and Women in Florida Broadcasting, Inc. ("Women"), licensee of Station WDFL(FM), Channel 295C1, Cross City, Florida, filed comments. Taylor filed reply comments.

2. In comments Taylor notes that the proposed reference point for Tavares is short-spaced to a pending application (File No. BPH-891129IB) for Station WDFL(FM).¹ However, Taylor states that the Tavares reference point is the presently licensed site of Station WXXL(FM), and the Cross City application specifies facilities pursuant to Section 73.215 consistent with Station WXXL's operation at its proposed site with full Class C1 facilities. Taylor restates its intention to apply for Channel 294C1 at Tavares, if allotted.

3. Women filed comments proposing a change in the reference coordinates at Tavares. Noting that the coordinates proposed in the *Notice* (28-33-31 and 81-35-38), conflict with its pending application for Station WDFL(FM), Women proposes the use of alternate coordinates (28-31-08 and 81-25-11) at Tavares to eliminate the short-spacing.

4. In reply comments, Taylor states that since it has proposed no change affecting station separations, the fact that the reference point for Tavares is short-spaced to Station WDFL(FM)'s application should be irrelevant. Taylor maintains that its proposal retains the status quo with respect to all station separations, while still satisfying all

technical requirements with respect to its proposed new community of license. Taylor notes that Women has proposed to resolve the problem of the allotment short-spacing by specifying different reference coordinates for Tavares. Taylor believes a better approach would be to allow allotment changes that do not change required separations and do not degrade existing separations. Taylor argues that any other result would severely infringe on the flexibility of stations to seek facility changes. Taylor urges the Commission to act on its initial proposal as filed. However, Taylor states that it is willing to accept the revised reference coordinates only if it will expedite action on both proposals and will not require that an application to effectuate the change in its community of license at Station WXXL's present licensed site be processed under Section 73.215.

5. We deny Women's proposal to change the reference coordinates of an authorized transmitter site to eliminate a conflict with its application. We note that Women's application was filed prior to the effective date of *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC 4917 (1992), recon. pend. As such, we will follow established Commission policy, which states that rule making proposals which provide new service benefits are generally preferred over an application which represents a preference for a particular site. See *Andalusia, Alabama*, 49 FR 32201, published August 13, 1984, and *Rocky Mount, N.C.*, 6 FCC Rcd 2153 (1991). Women has presented no evidence as to why its site preference should be protected.

6. Based on the information before us, we believe the public interest would be served by reallocating FM Channel 294C1 from Leesburg to Tavares, Florida, at Station WXXL(FM)'s currently authorized transmitter site. Taylor has shown that the reallocation will result in a preferential arrangement of allotments. Tavares (population 7,383) would receive its first local transmission service, and Leesburg (population 14,903) will continue to receive local aural transmission service from Stations WLBE(AM) and WQBO(AM).² Neither Leesburg nor Tavares is located in an urbanized area.

7. Channel 294C1 can be allotted to Tavares at the petitioner's current transmitter site in compliance with the minimum distance separation requirements with a site restriction 30.1 kilometers (18.7 miles) southeast of the community.³ In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station WXXL(FM) to specify Tavares, Florida, as its community of license.

8. Accordingly, pursuant to the authority found 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 June 7, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Leesburg, Florida	--
Tavares, Florida	294C1

¹ As stated in the *Notice*, the Commission is currently considering a proposal to change the community of license for Station WDFL(FM), Channel 295C1, from Cross City to Bronson, Florida. See 7 FCC Rcd 5941 (1992).

² Population figures are taken from the 1990 U.S. Census.

³ The coordinates for Channel 294C1 at Tavares are North Latitude 28-33-31 and West Longitude 81-35-38.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WXXL(FM), Channel 294C1, Leesburg, Florida, IS MODIFIED, to specify Tavares, Florida, as its community of license in lieu of Leesburg, Florida, 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 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 Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, J. J. Taylor Companies, Inc., licensee of Station WXXL(FM) is required to submit a rule making fee in addition to the fee required for the application to effect the change of community of license.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau