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Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 93-314

In the Matter of

Amendment of Section 73.202(b) RM-8396
Table of Allotments,
FM Broadcast Stations.
(Cadiz and Oak Grove, Kentucky)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 15, 1995; Released: September 29, 1995

By the Chief, Allocations Branch:

1. At the request of Ham Broadcasting, Inc. ("petitioner"), licensee of Station WKDZ-FM, Channel 292A, Cadiz, Kentucky, the Commission has before it the Notice of Proposed Rule Making, 9 FCC Rcd 68 (1994), proposing the substitution of Channel 293C3 for Channel 292A at Cadiz, Kentucky, the reallocation of Channel 293C3 from Cadiz to Oak Grove, Kentucky, and the modification of Station WKDZ-FM's license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for Channel 293C3, if allotted to Oak Grove. Opposing comments were filed by Jim Ricks, Mayor of Cadiz; Harold Meredith, President of Cadiz and Trigg County Chamber of Commerce; D. Bruce Perkins, Cadiz City Councilman; Buddy Perry, Athletic Director of Trigg County High School; County Judge-Executive and Magistrates of Trigg County, Kentucky; W. Howell Hopson, III, Chairman of Trigg County Board of Education and Jim Wallace, Superintendent of Trigg County Schools (hereinafter referred to as "Cadiz respondents"); and Southern Broadcasting Corporation ("Southern"), licensee of Stations WABD(AM) and WCVQ(FM), Fort Campbell, Kentucky. Petitioner and Southern filed reply comments. Southern filed an erratum to its reply comments.

2. Background. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of

License R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Community of License MO&O"). Since Oak Grove is located within the Clarksville, Tennessee-Kentucky Urbanized Area, as defined by the U.S. Census, the Notice questioned whether Oak Grove should be credited with all of the aural services licensed in that Urbanized Area. In addition, we requested that petitioner address the issue of loss or gain areas or the number of reception services that currently serve the gain and loss area, or whether the gain and loss areas would include any underserved areas. Pursuant to RKO General (KFRC) ("KFRC"), 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck, Inc. ("Tuck"), 3 FCC Rcd 5374 (1988), we requested petitioner to submit information sufficient to address these issues.¹

3. Pleadings. In support of its proposal, petitioner submits an engineering analysis showing that the reallocation of Channel 293C3 to Oak Grove will serve an area of 4,824 square kilometers (1,863 square miles) with a total population of 184,928. The gain area will service an area of 3,824 square kilometers (1,477 square miles) with a population of 175,339, and the loss area is 881 square kilometers (340 square miles) with a population of 4,915.² Hence, petitioner claims the proposed upgrade will create a net service gain area of 2,988 square kilometers (1,154 square miles) with a population of 170,424. Both the gain and loss areas receive more than five reception services and

¹ KFRC and Tuck clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," i.e., the degree of which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the Urbanized Area of the city. Third, the Commission examines the interdependence of the suburban community with the central city. See KFRC, 5 FCC Rcd at 3223; Tuck, 3 FCC Rcd at 5377-78.

² Petitioner notes that the small population inside the loss area is attributable to the fact much of WKDZ-FM's existing 1 mV/m coverage area in Trigg County includes the unpopulated land between the Lakes National Recreation Area. Petitioner asserts that this area should not be considered a loss area since no people are affected because it is uninhabited.

Cadiz will still retain one local aural transmission service.³ Thus, petitioner maintains that the proposed upgrade at Oak Grove will expand Station WKDZ-FM's coverage area significantly without creating any underserved areas or depriving Cadiz of its sole local aural transmission service.

4. Petitioner claims that pursuant to the factors enumerated in KFRC, Oak Grove is entitled to a first local service preference. Petitioner contends that in making this determination, the Commission focuses on the relationship between the proposed community of license and the central city of the Urbanized Area, i.e., the extent to which the two cities are "interdependent" rather than separate, distinct communities with different needs and interests. Petitioner states that Oak Grove is an incorporated community located in Christian County, Kentucky. Petitioner also states that Oak Grove is an entirely separate and distinct community with its own local government, police force, fire department, chamber of commerce, numerous churches, civic organizations and approximately 160 businesses. Petitioner submits statements from the mayor and county executive judge demonstrating that Oak Grove and Clarksville are independent of each other and should be regarded as separate communities for Section 307(b) purposes. Petitioner maintains that nearly three-fourths (73%) of Oak Grove's work force is employed in Christian County, Kentucky and not in Clarksville, Tennessee.⁴

5. In their respective comments, the Cadiz respondents state, inter alia, that they oppose the reallocation of Station WKDZ-FM from Cadiz to Oak Grove because (a) for over 20 years Station WKDZ-FM, the only local full-time aural service, has been a vital part of the community; (b) the removal would have a devastating effect on the county's tourism and revenue; (c) the reallocation to Oak Grove would eliminate the only nighttime service and leave a daytime-only AM service, which would not sufficiently provide meaningful service to the community; (d) the community would be deprived of its primary source of information, such as emergency information, educational, sports, political and religious announcements and activities; (e) the reallocation would

move Station WKDZ-FM into the Clarksville, Tennessee-Kentucky Urbanized Area, which already has six aural services licensed to the area; and (f) the removal would cause disruption of service to Cadiz and would not be in the public interest.

6. In its comments, Southern Broadcasting Corporation, licensee of Stations WABD(AM) and WCVQ(FM), Fort Campbell, Kentucky, states that Oak Grove is a small community adjacent to and a part of the Clarksville, Tennessee-Kentucky Urbanized Area. Southern also states that the allotment would in effect provide a seventh aural service to the Clarksville-Tennessee-Kentucky Urbanized Area, and would leave Cadiz with a daytime-only AM station. Southern asserts that when adopting the rules permitting FM stations to change communities of license on a non-competitive basis, the Commission stated it would not permit manipulation of its allotment criteria by granting a Section 307(b) first local service preference in situations where such a preference is sought for a suburban community that is interdependent and part of a larger metropolitan area, citing Community of License MO&O, supra. Southern further claims that in determining the degree of interdependence between communities in this context, the presence of the smaller community within the Urbanized Area of a larger one creates an inference of interdependence, citing KFRC, supra. Southern asserts that the change of community decisions decided since 1990 have followed principles set forth in the Community of License MO&O and KFRC.

7. In its reply comments, petitioner alleges that the objection by the Cadiz community is based on the fact that the upgrade would primarily serve the needs of other communities and would focus less on the needs of Cadiz. Petitioner reiterates its earlier argument that the proposed Class C3 facility would be in the public interest since it would result in a more efficient use of the broadcast spectrum and serve more area and population, wherever the station is licensed. Petitioner asserts that Station WKDZ-FM cannot upgrade and continue to provide 3.16 mV/m service to Cadiz, and thus, has no alternative but to change its community of license or remain a Class A station.⁵

³ Cadiz is also served by Station WKDZ(AM).

⁴ See also para. 14, infra.

⁵ Our engineering analysis has confirmed that Station WKDZ-FM cannot upgrade to a Class C3 facility at Cadiz. Additionally, the analysis reveals that from the proposed Oak Grove site, Station WKDZ-FM would still provide

From its proposed transmitter site, petitioner claims that Station WKDZ-FM will continue to provide nighttime service to Cadiz; residents will continue to be included in the station's audience; and the programs will be in accordance with the dictates of the marketplace, which governs the programming of every radio station. Petitioner also notes that it will continue to operate Station WKDZ(AM), which is licensed at Cadiz. Petitioner points out the community's failure to recognize that the proposed upgrade is critical to the economic survival of the station, and that denial of the upgrade may put Trigg County at risk of losing nighttime service from Station WKDZ-FM altogether.

8. In response to Southern's opposition, petitioner argues that Southern's objection is based on the strong economic motive that the signal would overlap with Southern's radio Stations WABD(AM) and WCVQ(FM) at Fort Campbell, Kentucky. Petitioner asserts that although the U.S. Census Bureau has placed Oak Grove within the Clarksville, Kentucky-Tennessee Urbanized Area, the placement is solely the result of a "mechanical application" of the Census Bureau's definition of Urbanized Area, and is not an accurate indicator of the real relationship between Oak Grove and Clarksville. Petitioner claims that Southern has not provided any concrete evidence demonstrating that Oak Grove is, in fact, "interdependent" with Clarksville as the term has been defined by the Commission in prior related cases. On the other hand, petitioner states that it has presented detailed factual information, not contradicted by Southern, thoroughly demonstrating that Oak Grove is an entirely distinct community with a separate need for a local radio broadcast service.

9. In response to petitioner's reply comments, Southern reiterates its earlier arguments. Southern claims that petitioner fails to demonstrate that the Oak Grove allotment deserves a first service allotment preference in spite of its presence within the Clarksville, Tennessee-Kentucky Urbanized Area. Furthermore, Southern states that petitioner fails to show that Oak Grove is sufficiently independent of surrounding communities in the Urbanized Area to warrant such a preference. Southern further states that petitioner, in support of its independence argument, submits that Oak Grove has its own municipal

Cadiz with primary service (60 dBu signal), but would not provide the community with city grade coverage (70 dBu signal).

government and is tied more to Christian County, Kentucky, than to Clarksville, Tennessee, the central city in the Urbanized Area. Southern claims that petitioner's factual showings are incomplete and misleading. They ignore Oak Grove's dependence upon Fort Campbell, the major facilities of which are included within the Urbanized Area. Southern contends that Oak Grove is dependent upon Fort Campbell for jobs, business and health care. Additionally, Oak Grove officials rely upon Fort Campbell to help meet emergencies and consider Oak Grove to be an integral part of the larger community that includes Fort Campbell. Southern further claims that officials rely on other neighboring jurisdictions, including Clarksville, for cooperation. Southern provides evidence that Oak Grove is, in fact, in the Clarksville-Hopkinsville advertising market and Metropolitan Statistical Area.⁶ In addition, Oak Grove is 26 times smaller and contiguous to Clarksville. Southern concludes that for the foregoing reasons, petitioner should not receive a first service preference for Oak Grove and the proposal should be denied.

10. Discussion. After careful review of the information before us, we believe that the substitution of Channel 293C3 for Channel 292A at Cadiz and the reallocation of Channel 293C3 to Oak Grove, Kentucky, would be in the public interest. We also find that Oak Grove should be treated as sufficiently separate and distinct from the Clarksville, Tennessee-Kentucky Urbanized Area, and should not be credited with the six aural services licensed to the Urbanized Area. Therefore, we conclude that Oak Grove is entitled to a first local service preference, and the reallocation of Channel 293C3 from Cadiz to Oak Grove would provide the community with its first local aural transmission service.

11. We now evaluate the three criteria enumerated in KFRC and Tuck. The first test is signal population coverage i.e., the extent to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Our engineering analysis has determined that the proposed Class C3 site at Oak Grove would place a 60 dBu signal (primary service) over 100% of Oak Grove, Kentucky, Clarksville, Tennessee, and Fort

⁶ Hopkinsville is located approximately 18.5 kilometers (11.5 miles) from Oak Grove.

Campbell, Kentucky. A 70 dBu signal (city grade) would cover 100% of Oak Grove, 25% of Clarksville and 100% of Fort Campbell, and would cover 60% of the total land area of the Clarksville, Tennessee-Kentucky Urbanized Area. The 60 dBu signal would provide service to the entire population (2,863 persons)⁷ of Oak Grove, and also would provide service to the entire population (97,581 persons) within the Urbanized Area. A 70 dBu signal would serve a population of 58,549 persons within the Urbanized Area.

12. With respect to the second criterion, of relative size and proximity, we note that Oak Grove is approximately 10.5 kilometers (6.5 miles) north of the central city of Clarksville and has a population of 2,863, comprising 2.93% of the total population of the Urbanized Area, whereas Clarksville has a population of 75,494, which is 26 times larger. Furthermore, while Oak Grove is entirely within the Clarksville, Tennessee-Kentucky Urbanized Area, Oak Grove is closer to Ft. Campbell, Kentucky, than to the "central" city of Clarksville, Tennessee.⁸

13. As stated in KFRC, the showing required under the third criterion of independence-interdependence between the smaller city and the central city depends upon an analysis of the eight factors the Commission has previously found relevant to a finding of interdependence, namely:

(1) the extent to which community residents work in the larger 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 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 telephone book provided by the local telephone company or zip code; (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.⁹

14. Although Oak Grove exhibits some characteristics that would support a claim of interdependence, we find that the evidence addressing most of the factors relevant to this criterion supports a finding of independence. Specifically, petitioner submits letters from the Mayor of Oak Grove and the County Judge Executive of Christian County stating that their respective jurisdictions are independent from the Clarksville, Tennessee-Kentucky Urbanized Area. Petitioner also submits evidence showing that Oak Grove has its own mayor, city council, and annual budget. Oak Grove has its own post office and zip code, but does not have its own newspaper or telephone directory. Oak Grove has a wide variety of commercial businesses, including grocery stores, restaurants, furniture stores, banks, garages, automobile sales, mobile home sales, video rentals, liquor stores, pawn shops, and dry cleaners. In addition, Oak Grove has its own Chamber of Commerce, civic clubs and churches. Because it is a small community, Oak Grove does not have its own hospital or public transportation, but does have its own emergency ambulance service and school buses. Arbitron includes Clarksville listeners in radio audience measurements for Montgomery County, Tennessee, but excludes Oak Grove listeners in its radio audience measurements for Christian County, Kentucky, thereby indicating a separate advertising market. Oak Grove and Clarksville are also served by separate cable operators. Oak Grove has its own municipal services, which include a police department, fire department, water system, etc. There are no libraries in Oak Grove, but the county is served by the Christian County Bookmobile from Hopkinsville, Kentucky. We also note a majority of the Oak Grove residents are military and work in the neighboring Ft. Campbell, Kentucky area, rather than Oak Grove. However, as stated by petitioner, Oak Grove and Ft. Campbell are located in Christian County, Kentucky, where 73% of the work force is employed, while only 27% of the work force is employed out-of-state.

⁷Population figures taken from the 1990 U.S. Census.

⁸ Oak Grove is located approximately 2.0 kilometers (1.2 miles) east of Fort Campbell.

⁹ See KFRC, 5 FCC Rcd at 3223; Tuck, 3 FCC Rcd at 5378.

15. On an overall basis, while Tuck factors one and two (i.e., signal population coverage and size/proximity of suburban community to central city) would appear to favor attributing the Clarksville, Tennessee-Kentucky Urbanized Area aural services to Oak Grove, the third factor, interdependence of the suburban community to the Urbanized Area, supports a finding of not attributing the Clarksville, Tennessee-Kentucky Urbanized Area aural services to Oak Grove. As stated in Tuck, the size and proximity of the specified community to the central city and signal population coverage are pertinent, but less significant than evidence of independence. As a result, we conclude that Oak Grove is sufficiently independent from the Clarksville, Tennessee-Kentucky Urbanized Area so that the aural services licensed to the Urbanized Area should not be attributed to Oak Grove.

16. Having made this conclusion, we next must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Community of License MO&O, supra. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).¹⁰ In making this comparison, we find that the proposed reallocation of Channel 293C3 to Oak Grove (population 2,863) would provide the community with its first local transmission service, which triggers priority three. By way of contrast, retaining the allotment at Cadiz (population 2,148) would not trigger priority three because the community already has a daytime-only AM station. Under priority four, retention of Station WKDZ-FM would constitute the first nighttime transmission service and first competitive aural transmission service. While these are important considerations, they do not outweigh, in this instance, the presence of the higher allotment priority of a first local transmission service. See, e.g., Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992), recon. pending; Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3183 (1995).

17. Moreover, we believe that other grounds

¹⁰The FM 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. [Co-equal weight is given to priorities (2) and (3).]

exist for granting the petitioner's proposal. First, Station WKDZ-FM will be able to upgrade its facilities which it cannot do at its current community of license. Second, our engineering analysis reveals that this upgrade and the reallocation to Oak Grove would result in a gain area of 3,795 square kilometers (1,466 square miles) with a population of 168,427 persons, and a loss area of 906 square kilometers (350 square miles) with a population of 8,546 persons. This would result in a net gain area of 2,889 square kilometers (1,116 square miles) with a population of 159,881 persons. While this gain in area and population is offset by the fact that the relocation of Channel 293C3 will also create a loss of service to 8,546 persons, our concern is mitigated by the fact that both the loss and gain areas would continue to be served by at least five full-time reception services, and we consider both areas to be well-served.

18. We turn now to Southern's contention that this case is analogous to Fairfield and Norwood, Ohio ("Fairfield"), 7 FCC Rcd 2377 (1992), and Van Wert, Ohio and Monroeville, Indiana ("Van Wert"), 7 FCC Rcd 6519 (1992), and should, as decided in those cases, be denied. We disagree. In Fairfield, the proposed reallocation and change of community of license from Fairfield to Norwood, Ohio, was denied because, based on the record of that case, the community of Norwood was found to be completely surrounded by the city of Cincinnati, Ohio, and not sufficiently independent of Cincinnati under the Tuck factors to warrant a first local service preference. See 7 FCC Rcd at 2378 (paras. 7-11). By way of contrast, as discussed above, the petitioner has demonstrated Oak Grove's independence from the Clarksville, Tennessee-Kentucky Urbanized Area pursuant to the Tuck criteria. In Van Wert, a proposed reallocation and change of community of license to Monroeville was denied because the larger community of Van Wert (population 11,035) was determined to have a greater need for a second radio station--which constituted that community's sole local nighttime service--than the smaller community of Monroeville (population 1,372) had for a first local service. By way of contrast, the reallocation and change of community of license from Cadiz to Oak Grove would result in a first local service to a larger community. Further, there is an improvement in the station's facilities in the instant case which was not present in Van Wert.

19. Finally, Southern's concerns about increased competition in the Clarksville, Kentucky-

Tennessee Urbanized Area raise issues which the Commission has already determined are not relevant in either a licensing or allotment context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues. In a related context, there is no Commission requirement for petitioner or any other party to demonstrate a demand or need for an allotment aside from the already stated willingness of petitioner to apply for the Channel 293C3 allotment at Oak Grove and construct the proposed facility.

20. We believe that the public interest would be served by substituting Channel 293C3 for Channel 292A at Cadiz, and the reallocating Channel 293C3 to Oak Grove, Kentucky, since it would provide the community with its first local aural transmission service and enable Station WKDZ-FM to expand its service area. An engineering analysis has determined that Channel 293C3 can be allotted at Oak Grove, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north at petitioner's requested site.¹¹ Therefore, in accordance with Section 1.420(i) of the Commission's Rules, we also modify Station WKDZ-FM's license to specify operation on Channel 293C3 at Oak Grove, Kentucky in lieu of Channel 292A at Cadiz, Kentucky.

21. 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 **November 13, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Oak Grove, Kentucky	293C3
Cadiz, Kentucky	---

¹¹The coordinates for Channel 293C3 at Oak Grove are North Latitude 36-45-05 and West Longitude 87-27-02.

22. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Ham Broadcasting, Inc., for Station WKDZ-FM, Cadiz, Kentucky, IS MODIFIED to specify operation on Channel 293C3 in Oak Grove, Kentucky, in lieu of Channel 292A at Cadiz, Kentucky, 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.

(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.

23. 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 upgrade. As a result of this proceeding, Ham Broadcasting, Inc., licensee of Station WKDZ-FM is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license and upgrade.

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

25. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

