

# Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments )  
FM Broadcast Stations. )  
(Mount Pleasant and Hemlock, Michigan) )

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

To: Chief, Allocations Branch

### SUPPLEMENT TO PETITION FOR RULE MAKING

Wilks Broadcasting LLC ("Wilks"), licensee of WCEN-FM, Mount Pleasant, Michigan, by its undersigned attorneys, hereby supplements its Petition for Rule Making to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to reallocate Channel 233C1 from Mount Pleasant, Michigan to Hemlock, Michigan and to modify the license of WCEN-FM to specify Hemlock as its community of license.<sup>1</sup> The purpose of this Supplement is to demonstrate that Wilks' proposal complies with the minimum distance spacing requirement set forth in Section 73.207 of the Commission's rules, taking into account allowable short spacing.

Wilks proposes to reallocate Channel 233C1 to Hemlock at WCEN-FM's existing transmitter site. As demonstrated in the attached supplemental Engineering Statement, the WCEN-FM transmitter site is short-spaced to stations WCSX(FM), Birmingham, Michigan, WKLQ(FM), Holland, Michigan, and WBYB(FM), Leland, Michigan. The short spacings between WCEN-FM and each of WCSX(FM) and WKLQ(FM) are grandfathered, each of the

<sup>1</sup> The Petition was filed on November 29, 2000.

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stations having been authorized prior to 1964.<sup>2</sup> The short spacing between WCEN-FM and WBYB(FM) is due to the Commission's authorization of WBYB(FM) to operate at a site short-spaced to WCEN-FM pursuant to Section 73.215.<sup>3</sup> Because Wilks proposes no change in WCEN-FM's transmission facilities, the proposed reallocation will not exacerbate these existing short spacings, increase the potential for interference between the currently short-spaced stations, nor create any new short spacings. Thus, Wilks' proposal is acceptable under the Commission's policy favoring relaxation of the spacing rules at the allotment stage where no transmitter site or other technical change is being proposed and the stations involved are pre-1964 short-spaced stations or the petitioning station has been restricted by another station pursuant to Section 73.215.<sup>4</sup>

For example, in *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992), the Commission permitted pre-1964 grandfathered short-spaced WMKJ(FM), Newnan, Georgia, to change its community of license based on the rationale that pre-1964 grandfathered stations should be provided the same reallocation opportunities as other stations. More recently, in *Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945 (2000), the Commission extended this policy

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<sup>2</sup> See attached supplemental Engineering Statement. WCSX(FM) was permitted to relocate its transmitter site subsequent to 1964 pursuant to a prior version of Section 73.213(a) of the Commission's rules governing modifications and relocations of grandfathered short-spaced stations. Moreover, the Commission authorized both WCEN-FM and WKLQ(FM) to make changes to their facilities subsequent to 1964 pursuant to a now-defunct short-spacing agreement entered into by prior licensees of the stations. Pursuant to this agreement, WCEN-FM was permitted to relocate its transmitter site to a location that reduced the grandfathered short spacing; thus, its change was also consistent with the version of Section 73.213 that existed at the time. See Revision of Broadcast FM Rules, Fourth *Report and Order*, 40 FCC 868 (1964).

<sup>3</sup> See supplemental Engineering Statement.

<sup>4</sup> See *Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945 (2000); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992).

to include short spacings created pursuant to Section 73.215 of the Commission's rules. In *Killeen*, KLNC(FM), Killeen, Texas, was authorized to change its community of license even though three stations had been authorized to operate at locations short-spaced to it pursuant to Section 73.215 (and KLNC(FM) was grandfathered with respect to a fourth station). In allowing KLNC(FM) to change its community of license, the Commission acknowledged that "to do otherwise would result in preventing a station from changing its community of license where it did not create the short-spacing, even though the change results in a preferential arrangement of allotments."<sup>5</sup>

Similarly, in the instant reallocation proceeding, the short spacings between WCEN-FM and the Leland, Holland, and Birmingham stations have existed for some time and were not created by Wilks. Moreover, as demonstrated in Wilks' original Petition for Rule Making, reallocation of WCEN-FM to Hemlock will serve the public interest by providing that community with a first local transmission service without depriving any listeners of reception service or Mount Pleasant of local transmission service. Finally, Wilks does not propose to relocate WCEN-FM's transmitter or otherwise modify the station's facilities, to use contour protection with respect to any other station, or to create any new short spacings. Thus, the policy established in *Newnan* and *Killeen* must be applied to permit WCEN-FM to change its community of license.<sup>6</sup>

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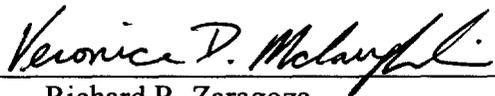
<sup>5</sup> *Newnan and Peachtree City, Georgia*, 7 FCC Rcd at ¶ 11. The *Newnan* policy has been extended to cover pre-1989 short spacings based on this same rationale. See *Freemont and Holton, Michigan*, 14 FCC Rcd 17108 (1999).

<sup>6</sup> See *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (agency must treat similarly situated applicants in like manner).

In conclusion, Wilks respectfully requests that the Commission promptly initiate the rule making requested in its Petition to amend Section 73.202(b) of the Commission's rules, the Table of Allotments for FM Broadcast Stations, to reallocate Channel 233C1 from Mount Pleasant to Hemlock, Michigan, as the latter community's first local aural transmission service.

Respectfully submitted,

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**ENGINEERING STATEMENT  
IN SUPPORT OF  
SUPPLEMENT TO PETITION FOR RULE MAKING  
BY  
WILKS BROADCASTING LLC**

**January 17, 2001**

## **PURPOSE AND SCOPE**

The Petition of which this Statement is a part, requests a modification of the FM Table of Allotments in 47 C.F.R. 73.202(b) to change the Community of License of WCEN-FM, 233C1, Mount Pleasant, MI to Hemlock, MI. This supplement is filed in response to questions raised by the Commission staff regarding allotment spacing to nearby facilities.

## **ALLOTMENT COORDINATES**

The present allotment coordinates of Channel 233C1 at Mount Pleasant, MI are N43-34-36, W84-45-57.

We hereby propose to reallocate Channel 233C1 to Hemlock, MI at N43-43-36, W84-36-16, the coordinates of the currently licensed WCEN-FM transmitter site.

The proposed allotment coordinates of Channel 233C1 at Hemlock, MI (which are the coordinates of the present licensed WCEN-FM transmitter site) are short spaced to the following facilities:

<b>WBYB(FM) 232C2</b>	Leland, MI	N44-46-19 W85-40-58
Required Spacing - 158 km	Actual Spacing - 144.6 km	
<b>WKLQ(FM) 233B</b>	Holland, MI	N42-51-20 W85-57-45
Required Spacing - 270 km	Actual Spacing - 146.7 km	
<b>WCSX(FM) 234B</b>	Birmingham, MI	N42-27-13 W83-09-50
Required Spacing - 195 km	Actual Spacing - 183.7 km	

The allotment site for Channel 232C2 at Leland, MI (N44-54-48, W85-49-18) is fully spaced to the proposed allotment site. WBYB(FM)'s transmitter site was granted pursuant to 47 CFR Section 73.215 and the spacing between the proposed allotment site and WBYB(FM)'s site (144.6 km) meets the requirements of that section.

The allotment sites for Channel 233B at Holland, MI (WKLQ(FM)) and Channel 233C1 at Mount Pleasant, MI (WCEN-FM), as well as the transmitter sites of the stations, are short spaced. The short spacings, however, predate the spacing rule changes

of 1964 and are therefore grandfathered. (WCEN-FM commenced operations in 1963; WKLQ(FM) commenced operations in 1961.) Though both stations have made changes to their facilities subsequent to 1964 pursuant to a now-defunct short-spacing agreement entered into by prior licensees of the stations, only one such change, implemented by WCEN-FM, involved a change in site. *See* FCC File No. BMPH-19890119IA. This change, however, *reduced* the grandfathered short spacing and was thus consistent with the version of Section 73.213 of the Commission's Rules that existed at the time. *See Revision of Broadcast FM Rules, Fourth Report and Order*, 40 FCC 868 (1964). Moreover, the site change was specifically approved by the Commission, as were the other facilities upgrades implemented by both stations pursuant to the agreement.

WCEN-FM is also a grandfathered short-spaced station to WCSX(FM). The presently licensed WCSX(FM) transmitter site was authorized in 1973 pursuant to prior rules provisions of Section 73.213(a), allowing short-spaced stations to change their facilities in conformance with "bracket tables". The proposed allotment coordinates actually decrease the short spacing to WCSX(FM) by 3.1 km from the present allotment coordinates.

#### **70 dBu COVERAGE OF HEMLOCK, MI**

The community of Hemlock, MI is located at N43-24-50, W84-13-50 at a distance of 46.0 km from the WCEN-FM transmitter site and proposed allotment site. A full Class C1 facility (100 kW at 299 m HAAT) at the allotment site results in a HAAT of 315 m toward Hemlock, MI. The WCEN-FM facility (100 kW at 299 m HAAT) results in a HAAT of 315 m toward Hemlock, MI.

The 70 dBu f(50,50) contour from the WCEN-FM facility and a full Class C1 facility, in the direction of Hemlock, MI, lies at a distance of 51.0 km and encompasses the entire community of Hemlock.

#### **AURAL SERVICES IN MOUNT PLEASANT, MI**

Mount Pleasant, MI, currently has five licensed aural services:

WCEN-FM	233C1
WCZY-FM	282A

WCMU-FM	208C1
WMHW-FM	218A
WCEN(AM)	1150 kHz

### **AURAL SERVICES IN HEMLOCK, MI**

There are no aural services currently licensed to Hemlock, MI. WCEN-FM will become the first aural service licensed to that community.

### **CERTIFICATION**

I, Robert M. Smith Jr., of Port St. Lucie, Florida, do hereby certify that all of the statements, data and calculations in this Statement are true and correct to the best of my knowledge and belief. I further certify that I am an experienced and qualified broadcast engineer, and that my qualifications are a matter of record with the Federal Communications Commission.



Robert M. Smith Jr.