

RECEIVED ROOM

Before the
Federal Communications Commission

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Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	MM Docket No. 98-112
FM Broadcast Stations.)	RM-9027
(Anniston and Ashland, Alabama, and College)	RM-9268
Park, Covington, Milledgeville and)	RM-9384
Social Circle, Georgia))	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: February 7, 2001

Released: February 9, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration filed by Preston Small directed to the Report and Order in this proceeding, 15 FCC Rcd 9971 (2000). WNNX License Investment Co. ("WNNX License") filed an Opposition to Petition for Reconsideration. Radio South, Inc. filed Comments on Petition for Reconsideration. Preston Small filed a Reply to Oppositions to Petition for Reconsideration. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. The Notice of Proposed Rule Making in this proceeding set forth two mutually exclusive Petitions for Rule Making. 13 FCC Rcd 12738 (1998). First, Preston Small, licensee of Station WLRR, Channel 264A, Milledgeville, Georgia, proposed the substitution of Channel 264C3 for Channel 264A, reallocation of Channel 264C3 to Covington, Georgia, as a second local service, and modification of the Station WLRR license to specify operation on Channel 264C3 at Covington. Subsequently, in response to the Notice, Preston Small filed a Counterproposal proposing the reallocation of Channel 264C3 to Social Circle, Georgia, instead of Covington as originally proposed. Second, WNNX License, licensee of Station WHMA, Channel 263C, Anniston, Alabama, proposed the substitution of Channel 263C3 for Channel 263C, reallocation of Channel 263C3 to College Park, Georgia, and modification of the Station WHMA license to specify operation on Channel 263C3 at College Park.

3. The Report and Order substituted Channel 263C3 for Channel 263C, reallocated Channel 263C3 to College Park, and modified the Station WHMA license to specify operation on Channel 263C3 at College Park. In reaching this decision, we determined that the proposed Channel 263C3 allotment to College Park as a first local service would result in a preferential arrangement of allotments as required by Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. 5 FCC Rcd 7094 (1990).¹ Upon this determination, we then

¹ In determining whether a proposal would result in a preferential arrangement of allotments, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in Revision of (continued....)

determined that first local service at College Park would be preferred over the Preston Small proposal for a first local service at Social Circle.

4. In his Petition for Reconsideration, Preston Small argues that the Report and Order “substantially fails” to discuss his arguments with respect to the independence of College Park from the Atlanta Urbanized Area and whether College Park is entitled to consideration as a first local service. In this regard, Preston Small notes that under Faye and Richard Tuck, 3 FCC RCd 5374 (1988), we examine such proposals by considering the signal population coverage, the size and proximity of the proposed community to the urban center, and the interdependence of the proposed community and the urban center utilizing the eight Tuck factors.² While Preston Small acknowledges that interdependence is the most important factor considered in making an allocation decision involving the proposed reallocation of a station to an urbanized area, Preston Small contends that the Report and Order “mishandled” all three areas of inquiry.

5. We deny the Petition for Reconsideration. In doing so, we remain concerned with the potential migration of stations from lesser served rural areas to well-served urban areas and we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. We will discuss each of the arguments in the Petition for Reconsideration under the guidelines set forth in Faye and Richard Tuck.

6. The first area of inquiry concerns the extent a station will provide service to the entire Urbanized Area. In this situation, we recognize that Station WHMA will provide a 70 dBu signal to 45% of the Atlanta Urbanized Area. This does not support a conclusion that College Park is not entitled to consideration as a first local service. As a Class C3 facility, Station WHMA will invariably serve a large area. In regard to the extent of coverage in this instance, we note that in analogous situations involving a community outside of an Urbanized Area, the Commission only requires a showing pursuant to Faye and Richard Tuck in proposals providing 50% coverage to an Urbanized Area. Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In this connection, we note that we have approved reallocation proposals encompassing more than 45% of an Urbanized Area. Oraibi and Leupp, Arizona, 14 FCC Rcd 13547 (1999) (70 dBu over 90% of an Urbanized Area), and Mullins and Briarcliffe Acres, South Carolina, 14 FCC 10516 (1999) (70 dBu over 67% of an Urbanized Area). Our second area of

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_____ FM Assignment Policies and procedures, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

² In Faye and Richard Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the 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 needs and interests; (3) whether 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 local 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. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1996); Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570 (1997).

inquiry involves the relative populations of College Park to Atlanta. The 1990 College Park population of 20,457 persons is substantial and supports a preference for College Park as a first local service. While this population is only 5.2% of the population of Atlanta, such a percentage has not precluded favorable consideration as a first local service. See e.g. Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996); Bay St. Louis and Poplarville, Mississippi, 10 FCC Rcd 13144 (1995); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992); and D'Iberville and Wiggins, Mississippi, 10 FCC Rcd 10796 (1995).³ Our third, and most important, inquiry is the independence of the suburban community. In Faye and Richard Tuck, the Commission set forth eight factors in assessing the independence of a suburban community. The Preston Small Petition for Reconsideration discusses each of these factors. In order to address the arguments contained in the Petition for Reconsideration, we will evaluate the College Park reallocation proposal using each of these factors.

7. The first factor is the work patterns of the College Park residents. Preston Small states that 84% of the College Park residents work outside of College Park and precludes a favorable finding on this factor. In rebuttal, the City of College Park has stated that 15% of its workforce work in either local, state and federal government jobs. In addition to the 802 businesses licensed to College Park, the City of College Park states that, between 1991 and 1998, it has created 2,000 new jobs in the service sector. This suggests that a significant number of persons reside and work in College Park and the percentage of residents working in College Park may be higher than the 16% alleged by Preston Small. Even if the 16% estimate is accepted, 16% of the College Park workforce is sufficient to support a favorable finding on this factor. C.f. Coolidge and Gilbert, Arizona, 11 FCC Rcd 3610 (1996). In regard to the second factor, whether the smaller community has its own newspaper or other media that covers the community's needs and interests, Preston Small contends that the Report and Order erred by referring to the South Fulton Neighbor newspaper as a local newspaper providing news and advertising for College Park. We continue to believe that the South Fulton Neighbor, which excludes Atlanta, national and international news, sufficiently covers the needs and interests of College Park to warrant a favorable determination with respect to second factor. While the South Fulton Neighbor covers other independent communities such as Hapeville, Stockbridge, Fairburn and East Point, it does provide an outlet for College Park by publishing College Park news, sports, advertising, public meetings and College Park legal notices. There is also a local cable access channel, a City of College Park web site and a newsletter published by the City of College Park Recreation Department. We affirm our favorable finding on this factor. C.f. Elizabeth City, North Carolina and Chesapeake, Virginia, 9 FCC Rcd 3586 (1994); Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996).

8. The third factor, perception of community leaders and residents, and fourth factor, local government and elected officials, clearly support our determination concerning the independence of College Park. WNNX License has included a letter from the College Park mayor and city manager stating that College Park is a "community which stands entirely on our own, being completely self-supporting, and prides itself with providing quality municipal services to its citizens and businesses." WNNX License has

³ Preston Small has also cited our decision in Parker and Port St. Joe, Florida, 11 FCC Rcd 1095 (1996), in which we stated that a population percentage of 14.3% "runs counter to treating Parker as a distinct community." The decision in Parker and Port St. Joe does not preclude favorable consideration of College Park as a first local service for two reasons. First, the population of College Park (20,47 persons) is substantially larger than the population of Parker, Florida (4,598 persons). As indicated above, a substantial population evidences independence from a nearby Urbanized Area. Second, and notwithstanding the statement that a percentage of 14.3% runs counter to treating Parker as a distinct community, we did, in fact, determine that Parker was entitled to a preference as a first local service.

also included similar letters from community and business leaders. See Pleasanton, Bandera, Hondo and Schertz, Texas, 15 FCC Rcd 3068 (2000); Cadiz and Oak Grove, Kentucky, 10 FCC Rcd 10785 (1995); D'Iberville and Wiggins, Mississippi, 10 FCC Rcd 10796 (1995). Factor 4, local government and elected officials, clearly supports a view that College Park is independent of Atlanta. The City of College Park has 325 fulltime employees as well as a Mayor, City Manager, City Attorney, City Clerk, City Engineer and City Auditor.

9. Similarly, factor 5, local telephone directory and zip code, and factor 6, commercial establishments, health facilities and transportation systems, support our conclusion regarding the independence of College Park. College Park has its own zip codes and local post office. In regard to factor 6, College Park has 802 licensed business establishments and its own health facility. Likewise, factor 7, the extent to which the specified community and the central city are part of the same advertising market, favors a finding of independence. There are two newspapers that local advertisers use to reach the residents of College Park, the Clayton News Daily and the South Fulton Neighbor. Neither of these newspapers serve Atlanta. Finally, factor 8, the extent the specified community relies upon the metropolitan area for municipal services, supports a finding of independence.⁴ College Park has its own police and fire departments, department of public works, operates its own electricity and water distribution systems, operates its own sewer system and provides park and recreation facilities including a municipal golf course. College Park also enforces its own zoning, building and plumbing codes.

10. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Preston Small IS DENIED.

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

12. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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

⁴ Preston Small notes that Hartsfield-Atlanta International Airport, owned by the City of Atlanta, is located, in part, within College Park. In addition to a welcoming sign from the mayor of Atlanta, the City of Atlanta provides water, sewer, electricity and gas to the Airport. According to Preston Small, this supports a contention that College Park is dependent upon Atlanta. We disagree. No resident of College Park lives at the Airport. Moreover, there is nothing in the record of this proceeding indicating that the City of Atlanta provides any municipal services to College Park