

Federal Communications Commission

DA 01-1148

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

2001 MAY -9 P 2:44

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Charleroi and Duquesne, Pennsylvania))

RECEIVED
MM Docket No. 00-42 /
RM-9826

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 25, 2001 ; Released: May 4, 2001

By the Chief, Allocations Branch:

1. At the request of Keymarket Licenses, LLC ("petitioner"), licensee of Station WOGI-FM, Channel 252A, Charleroi, Pennsylvania, the Allocations Branch has before it the Notice of Proposed Rule Making, 15 FCC Rcd 49994 (2000), proposing the reallocation of Channel 252A from Charleroi to Duquesne, Pennsylvania, and the modification of Station WOGI-FM's license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Duquesne. No other comments were received.

2. The proposed reallocation was filed pursuant to 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 without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). In support of its proposal, petitioner state that Duquesne is incorporated and has a 1990 U.S. Census population of 8,225 persons. The city is governed by a mayor and a four-member city council. Duquesne provides police and volunteer fire and sewage services. It has its own public school system, churches (19), a public park, restaurants, shopping, and its own post office. Duquesne has social and charitable organizations such as the Moose and the American Croatian Club.

3. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change Community, supra. Under those procedures, we

compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.¹ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. In making this comparison, we find that the reallocation of Channel 252A to Duquesne triggers priority (3)--first local service. Under this priority, Duquesne would receive its first local aural transmission service, without depriving Charleroi (population 5,014) of its sole local service.² An engineering study has revealed that the reallocation would result in a loss area of 1,503 square kilometers (581 square miles) containing 131,751 persons. The gain area would also provide reception service to an area of 1,503 square kilometers (581 square miles) containing 1,126,640 persons, with a net gain of 994,889 persons. Although we are concerned with the substantial loss area, both the gain and loss areas will continue to receive at least five full-time reception services, and are considered to be well served. Since the reallocation of Channel 252A at Duquesne would provide a 70 dBu signal over only 31.2% of the Pittsburgh, Pennsylvania Urbanized Area, a Tuck analysis is not necessary.³

5. We believe the public interest would be served by reallocating Channel 252A from Charleroi to Duquesne, Pennsylvania, as the community's first local aural transmission service, without depriving Charleroi of its sole local service. An engineering analysis has determined that Channel 252A can be reallocated to Duquesne in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) east at petitioner's requested site.⁴ Since Duquesne is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence for the allotment was requested, but has not yet been received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence by the Canadian government for this allotment, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement." In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WOGI-FM's license to specify operation on Channel 252A at Duquesne, Pennsylvania, as its new community of license.

¹ The 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 given to priorities (2) and (3).]

² Station WESA(AM) would remain licensed to the community.

³ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁴ The coordinates for Channel 252A at Duquesne are 40-21-52 North Latitude and 79-48-49 West Longitude.

6. 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 18, 2001, 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>
Charleroi, Pennsylvania	--
Duquesne, Pennsylvania	252A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Keymarket Licenses, LLC, Station WOGI-FM, Charleroi, Pennsylvania, IS MODIFIED to specify operation on Channel 252A at Duquesne, Pennsylvania, 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.

8. 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, Keymarket Licenses, LLC, licensee of Station WOGI-FM, is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to petitioner, as follows:

Keymarket Communications, LLC
104 Broadway Avenue
Carnegie, Pennsylvania 15106

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

11. 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