

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

2001 JUL 23 P 3: 03

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Salem and Molalla, Oregon))	MM Docket No. 00-59 ✓
)	RM-10072
)	
(Avon and Fairport, New York))	MM Docket No. 00-60
)	RM-10073

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 11, 2001

Released: July 20, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a multiple docket *Notice of Proposed Rule Making*¹ setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, Entercom Portland, LLC, licensee of Station KRSK(FM), Salem, Oregon, and Entercom Rochester, LLC, licensee of Station WBBF-FM, Avon, New York, filed comments reiterating its intention to file an application for construction permit to effectuate the modification at each locality. No other comments were filed.²

2. Both petitioners filed their proposals for the reallocations in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.³

3. This is a multiple docket *Report and Order* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Report and Order*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this

¹ 16 FCC Rcd 4918 (2001).

² A late-filed *ex parte* comment submitted by Tim Hay opposing the Salem-Molalla change of community has not been considered in this proceeding. Not only did Mr. Hay fail to file his comment with the secretary of the Commission and serve the petitioner, he made unsupported allegations as to the petitioner's interest in serving the community of Molalla. Finally, Mr. Hay raises the issue of whether stations should be required to be located in their communities of license. This is an issue properly raised in a general rulemaking proceeding.

³ See *Report and Order* in MM Docket No. 88-526 ("*Change of Community R&O*"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*").

procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We discuss the following proposals:

A. MM Docket No. 01-59, RM-10072

Petitioner: Entercom Portland License LLC
C/O Brian M. Madden
Leventhal, Senter, & Lerman
Suite 600
Washington, DC 20006-1809

Determination: Reallot Channel 286C from Salem to Molalla, Oregon, as the community's first local aural transmission service, and modify station KSRK(FM)'s license to specify Molalla as its community of license.

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 September 10, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Salem, Oregon	---
Molalla, Oregon	286C

Coordinates: 45-00-35NL and 122-20-17 WL.

Additional Information: Channel 286C is reallocated from Salem to Molalla at Stations KSRK's licensed site 24.2 kilometers (15.0 miles) southeast of the community. Salem will continue to be served by three full-time AM stations. As noted in the *Notice*, there is no change of transmitter site and therefore no gain or loss in area or population. Therefore, the proposal will continue to provide a city-grade signal to over 50% of the Portland-Vancouver Urbanized Area, and the Salem, Oregon Urbanized Area. Furthermore, we note that, Molalla is not in either of the Urbanized Areas and since there is no site change, consistent with Commission precedent,⁴ no analysis of the communities pursuant to the policies enumerated in *Faye and Richard Tuck*⁵ is required because the proposal does not constitute a migration to an urbanized area. Salem will continue to be served by AM Stations KCCS, KBZY, and KSLM.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

B. MM Docket No. 01-60, RM-10073

Petitioner: Entercom Rochester License LLC
C/O H. Anthony Lehv

⁴ Petitioner cites to *Moncks Corner, Kiawah Island and Sampit, South Carolina*, 15 FCC Rcd 8973, 9892 (2000), and *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864, 2868 (1995).

⁵ 3 FCC Rcd 5374, 5378 (1988).

Leventhal, Senter, & Lerman
Suite 600
Washington, DC 20006-1809

Determination: Reallot Channel 227A from Avon, to Fairport, New York, as the community's first local aural transmission service, and modify Station WBBF-FM's license to specify Fairport as its community of license.

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 September 10, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Avon, New York	---
Fairport, New York	227A

Coordinates: 43-10-37 NL and 77-28-39 WL

Additional Information: Channel 227A is reallocated from Avon to Fairport, New York at petitioner's requested site 9.2 kilometers (5.7 miles) north of the community. Canadian concurrence has been received for the allotment. We have determined that this proposal will result in a preferential arrangement of allotments. Not only does the proposal provide a first local aural transmission service to Fairport, it also provides an additional reception service to 390,146 persons.⁶ By way of contrast, retaining the station in Avon serves priority (4), as there is already Station WYSL(AM) licensed to that community. We have also determined that that Fairport is a community for allotment purposes. In addition, we find that while Fairport is within the Rochester Urbanized Area, it is independent of that urbanized area pursuant to *Faye and Richard Tuck*.⁷ With respect to those factors, we find that the station's 70 dBu signal would encompass 65% of the Rochester Urbanized Area, that Fairport's population is 5,943 persons, or 2.5% of Rochester's population of 231,636, and that it is not interdependent on the larger community based on a majority of the eight factors outlined by the Commission.⁸

Based on our analysis of those eight factors and the submissions made by the petitioner in its

⁶ We recognize that there will be a loss area of 72,952 persons, but this population is well-served with approximately 32 AM or FM stations.

⁷ See 3 FCC Rcd 5374, 5378 (1988). Unlike the preceding case, this one requires a *Tuck* showing because the proposed community of license is located within an urbanized area.

⁸ These factors are: (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's 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) 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 municipal services such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378.

petition and in response to the *Notice*, we are satisfied that Fairport is independent of the urbanized area. Petitioner submitted information with its petition for rulemaking that satisfied, to some extent, *Tuck* Factors 2, 4, 5, 6 and 8. In its comments, petitioner addressed the issues raised in the *Notice*, *i.e.*, Factor 1, the extent to which community residents work in the local community as opposed to the larger urbanized area, and stated that an informal survey conducted by the Fairport Office of Economic Development indicated that approximately 2,200 persons of the 6,000 community residents work in the community. To satisfy Factor 3, petitioner also submitted affidavits of community leaders Kenneth Moore, Village Administrator, and Van Cardilli, past president of the Chamber of Commerce, attesting to the view that the community is a separate entity from the larger urbanized area of Rochester. Finally, to support Factor 2, petitioner submits additional documentation to show that there are additional local community advertising opportunities.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

4. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the licenses of Stations KSRK(FM) and WBBF-FM ARE MODIFIED to specify operation on Channel 286C at Molalla, Oregon, and Channel 227A at Fairport, New York, respectively, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, each 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.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and 2(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Entercom Portland License LLC, licensee of Station KSRK(FM), and Entercom Rochester License LLC, licensee of Station WBBF-FM, are each required to submit a rulemaking fee in addition to the fees required for the applications to effectuate the changes of community from Salem to Molalla, Oregon, and from Avon to Fairport, New York, respectively.

6. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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