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

2001 NOV 23 A 10: 20

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
FM Table of Allotments,	)	
FM Broadcast Stations.	)	
	)	
(Grants, Milan, and Shiprock, New Mexico)	)	MM Docket No. 01-118
	)	RM-10106
	)	
(Van Wert and Columbus Grove, Ohio)	)	MM Docket No. 01-119
	)	RM-10127
	)	
(Lebanon and Hamilton, Ohio and Fort Thomas, Kentucky)	)	MM Docket No. 01-122
	)	RM-10130
	)	
	)	
	)	

REPORT AND ORDER (Proceeding Terminated)

Adopted: November 7, 2001 **Released: November 16, 2001**

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a multiple docket *Notice of Proposed Rule Making* setting forth three 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. Each petitioner filed comments reiterating its intention to file an application for construction permit at each locality and effectuate the change of community if granted. No opposing comments or counterproposals were filed in any of the proceedings.

2. Each of the petitioners filed its proposal for reallotment 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.[1]

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 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:

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[1] *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"*).

A. **MM Docket No. 01-118 RM-10106**

Petitioner: **KXXQ Radio Partners, Inc. ("KXXQ")**
C/O Robert Lewis Thompson
Hiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Determination: Substitute Channel 264C0 for Channel 264A at Grants, New Mexico, reallot Channel 264C0 from Grants to Milan, New Mexico, and modify the license for Station KXXQ(FM) to reflect the changes. In addition, substitute Channel 299C1 for vacant Channel 265C1 at Shiprock, New Mexico to accommodate the changes.

Accordingly, pursuant to the authority contained in Sections4(i), 5(c)(1),303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective December 31, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

Community	Channel No.
Grants, New Mexico	224C2, 279C, 288C
Milan, New Mexico	264C0
Shiprock, New Mexico	299C1

Coordinates: Coordinates for Channel 264C0 at Milan are 35-21-19 NL and 107-56-52 WL. Coordinates for Channel 299C1 at Shiprock are 36-46-12 NL and 108-42-49 WL.

Additional Information: KXXQ notes that the reallotment will not deprive Grants of its sole local aural transmission service[2] and it will provide Milan with its second local aural transmission service[3] and its first competitive aural service, thus fulfilling priority four of the Commission's FM allotment priorities.[4] No urbanized areas are involved. In response to the *Notice*, KXXQ states that the reallotment will not deprive any listeners of existing reception service since the proposed 60 dBu of Channel 264C0 will encompass the 60 dBu of Channel 264A at Grants. It further states that Channel 264C0 will provide 60dBu service to an area of 21,636 square kilometers and with a 1990 U.S. Census population of 69,053 persons, which is a gain of 19,174 square kilometers and 53, 015 persons. The substitution of Channel 299C1 for Channel 265C1 at Shiprock involves no gain or loss.

Channel 264C0 is allotted at Milan with a site restriction of 21.2 kilometers (13.2 miles) north of the community. Channel 299C1 is allotted at Shiprock at the original allotment site.

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[2] Stations KMIN(AM), KDSK(FM), KYVA(FM), AND KQLV(FM) will remain in Grants.

[3] Daytime-only Station KZKL(AM) will remain in Milan.

[4] 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 is given to priorities (2) and (3).] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (FCC 1982).

FCC Contact: Victoria McCauley (202) 418-2180

B. MM Docket No. 01-119 RM-10127

Petitioner: **Clear Channel Broadcasting Licenses, Inc. ("Clear Channel")**
C/O Marissa G. Repp
F. William LeBeau
Hogan & Hartson
555 Thirteen Street, NW
Washington, DC 20004-1109

Determination: Substitute Channel 230B1 for Channel 230A at Van Wert, reallot the channel to Columbus Grove, Ohio, as the community's first local aural transmission service, and modify Clear Channel's construction permit for its unbuilt station to reflect the changes.

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 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective December 31, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

Community	Channel No.
Van Wert, Ohio	255B
Columbus Grove, Ohio	230B1

Coordinates: Coordinates for Channel 230B1 at Columbus Grove are 40-57-33 NL and 84-08-14 WL.

Additional Information: This proposal will not deprive Van Wert of its only aural transmission service[5] and will provide a first local service to Columbus Grove, thus fulfilling FM allotment priority three.[6] We are satisfied that Columbus Grove is a community for allotment purposes, and that it is not in an urbanized area.[7] Columbus Grove has its own city government, with an elected mayor, village council and police department. It has a water and sewage department, a public affairs office, school district and library. In addition, it has its own zip code and post office. Finally, it has a weekly newspaper, medical establishments and businesses.

In response to the *Notice*, Clear Channel comments on the relative population gains and losses resulting from the reallotment. Our analysis agrees with its showing that the loss area will continue to be well-served, and that there is a net gain of 135,623 additional listeners. In addition, our analysis shows that the gain area includes an area of 32.7 square kilometers with a population of 286 persons that will receive its fifth aural service.

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[5] Stations WBYR(FM) and WERT(AM) will remain in Van Wert.

[6] *See* note 4 *supra*.

[7] Our analysis shows that the proposed site for Channel 230A at Columbus Grove will provide a 70dBu signal to 22% of the Lima, Ohio Urbanized Area.

Channel 230B1 is allotted at Columbus Grove with a site restriction of 8.1 kilometers (5.0 miles) northwest of the community. We note that since this community is within 320 kilometers (200 miles) of the U.S.-Canadian border, we have requested concurrence of the Canadian government for the allotment. Concurrence has not yet been received for the allotment. Accordingly, any construction permit that is granted prior to the receipt of formal concurrence of the Canadian Government will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing if specifically objected to by Industry Canada. This condition will be removed once formal approval for the allotment is received from Industry Canada."

FCC Contact: Victoria McCauley (202) 418-2180.

C. MM Docket No. 01-122 RM-10130

Petitioners:

Infinity Radio License Inc. ("Infinity")
c/o John D. Poutasse
2000 K Street, N.W. Suite 600
Washington, DC 20006-1809

Caron Broadcasting ("Caron")
c/o James P. Riley
Fletcher, Heald and Hildreth
1300 N. 17th Street, 11th Floor
Arlington, VA 22209-3801

Determination: Reallot Channel 247A from Lebanon, Ohio to Fort Thomas, Kentucky as the community's first local aural transmission service, and the modify Station WAQZ(FM)'s license to reflect the change. Reallot Channel 243B from Hamilton, Ohio to Lebanon, as a replacement channel for the community's first local aural transmission service and modify Station WYGY(FM)'s license to reflect the change.

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 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective December 31, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

Community	Channel No.
Hamilton, Ohio	278B
Lebanon, Ohio	243B
Fort Thomas, Kentucky	247A

Coordinates: Coordinates for Channel 247A at Fort Thomas, Kentucky, are 39-11-51 NL and 84-22-56 WL. Coordinates for Channel 243B at Lebanon, Ohio, are 39-21-11 NL and 84-19-30 WL.

Additional Information: In support of the proposals, Infinity and Caron note that the result of this combination of reallotments will be that neither Hamilton nor Lebanon will be deprived of its sole local service[8] and Fort Thomas will receive it first local aural transmission service. With respect to the community status of Fort Thomas, they state that it was incorporated in 1867 and had a 1990 U.S. Census population of 16,032 persons.

[8] Stations WHSS(FM), WGRR(FM), and WMOH(AM) will remain in Hamilton.

Tuck Analysis. We find that Fort Thomas, Kentucky although wholly within the Urbanized Area of Cincinnati, Ohio, is independent of the Cincinnati Urbanized Area and thus entitled to a first local service preference under the FM Allotment priorities.[9] Infinity and Caron have established its independence based on a preponderance of the factors listed in *Faye and Richard Tuck, Inc.*[10] They show that Fort Thomas, 1990 U.S. Census population 16,032, has an elected mayor and six member Board of Council whose legislative authority oversees six committees that control city services (Factor 1). In addition, the city assesses its own payroll and real estate taxes and had an operating budget of approximately $6 million last year. The city government employs 68 people fulltime and 20 part time. It has its own police and fire departments, public works department, and schools, and its county supplies its water (Factor 2). It has over 1,000 businesses, two hospitals, and bus service supplied by Kentucky (Factor 3). It has its own post office and zip code, and is listed in the Campbell County telephone book (Factor 4). It has two newspapers and a website (Factor 5). Community leaders consider it to be independent; it received a special award from the state of Kentucky for its local efforts to maintain and restore its business districts, and it has several local civic associations (Factor 6).

Technical Analysis. With respect to the reallotment of Channel 243B from Hamilton to Lebanon and the modification of Station WYGY(FM), there are no technical changes to the facility. We therefore agree with their claim that the proposal is fully spaced based on Section 73.213(a) of the Commission's Rules regarding "pre-1964" grandfathered short-spaced stations under Section 73.207 of the rules.[11] With respect to the reallotment of Channel 247A from Lebanon to Fort Thomas, Infinity and Caron state that there will be a net gain of 46,000 persons in the gain area. Our analysis shows that approximately 60,000 persons will gain service and that both the loss and gain areas are well served with five or more services.

Channel 247A can be reallotted from Lebanon to Fort Thomas at petitioner's requested site 14.7 kilometers (9.1 miles) north of Fort Thomas. Channel 243B can be reallotted from Hamilton to Lebanon at Station WYGY(FM)'s existing site 13.9 kilometers (8.6 miles) southwest of the community.

Our action in approving the reallotment and change of community of Station WAQZ(FM), Channel 247A, from Lebanon, Ohio to Fort Thomas, Kentucky, is premised on the activation of Station WYGY(FM), Channel 243B, at Lebanon to prevent the removal of the community's sole local aural service. Accordingly, consistent with precedent, we will condition the grant of an authorization to operate Station WAQZ(FM) on Channel 247A at Fort Thomas upon the activation of Station WYGY(FM), Channel 243B at Lebanon and the grant of program test authority. We also note that since both communities are within 320 kilometers (200 miles) of the U.S.-Canadian border, we have requested concurrence of the Canadian government for the allotments. Concurrence has not yet been received for the allotments. Accordingly, any construction permit that is granted prior to the receipt of formal concurrence of the Canadian Government will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing if

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[9] *See* note 4, *supra.*

[10] 3 FCC Rcd 5374, 5378 (1988).

[11] Citing *Report and Order in* MM Docket No. 90-138 (Newnan and Peachtree City, Georgia), 7 FCC Rcd 6307 (1992); *Report and Order in* MM Docket No. 99-216 (Oceanside and Encinitas, California, 14 FC Rcd 15303 (1999); *Report and Order in* MM Docket No. 99-170 (Berlin and North Conway, New Hampshire), 14 FCC Rcd 15307 (1999).

specifically objected to by Industry Canada. This condition will be removed once formal approval for the allotment is received from Industry Canada."

FCC Contact: Victoria McCauley (202) 418-2180.

4. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KXXQ Radio Partners, Inc. for Station KXXQ(FM) IS MODIFIED to specify operation on Channel 264C0 at Milan, New Mexico, the permit of Clear Channel Broadcasting Licenses, Inc. for its unbuilt station at Van Wert, Ohio, IS MODIFIED to specify operation on Channel 230B1 at Columbus Grove, Ohio, the license of Infinity Radio Station License Inc. for Station WAQZ(FM) IS MODIFIED to specify operation on Channel 247A at Fort Thomas, Kentucky, and the license of Caron Broadcasting, Inc. for Station WYGY(FM) IS MODIFIED to specify operation on Channel 243B at Lebanon, Ohio, 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. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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