

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

RECEIVED & INSPECTED
APR - 2 2002
FCC - MAILROOM

In the matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Lincoln and Sherman, Illinois))
)

MM Docket No. 01-120
RM-10126

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 13, 2002

Released: March 22, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making*¹ issued at the request of Saga Communications, Inc. ("petitioner"), licensee of Station WMHX(FM), Lincoln, Illinois. Petitioner filed comments in support of its proposal. P&M Communications ("P&M"), and Long Nine, Inc. ("Long Nine"), filed comments in opposition to the proposal. Petitioner filed consolidated reply comments addressing both oppositions.

2. The *Notice* proposed to reallocate Channel 230B1 from Lincoln, Illinois, to Sherman, Illinois as the community's first local aural transmission service, and modify the license for Station WMHX(FM) to reflect the changes. This proposal was filed pursuant to Section 1.420(i) of the Commission's Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of its petition, petitioner states that the proposal will serve the public interest as a preferential arrangement of allotments because it will serve priority three of the FM Allotment priorities by providing the community of Sherman with its first local aural transmission service. Further, it notes that its proposal will not deprive the community of Lincoln, 1990 U. S. Census population 15, 418 persons, of its only local aural transmission service.³ It points out that the change of transmitter site involved will result in a decrease in overall population served, but argues this decrease is so slight it should be considered *de minimis*. It further states that no gain or loss area resulting from the change receives fewer than five aural reception services, and therefore the area is well-served.

¹ 16 FCC Rcd 12000 (2001).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1988).

³ It notes that daytime Station WLLM(AM), and noncommercial educational Station WLNX(FM) are both licensed to the community.

4. It further states that the community of Sherman, population 2,080 persons, is a community for allotment purposes. It notes that Sherman is listed in the Census as a village, has an elected mayor and board of trustees, and has a village clerk, its own zip code and post office. It has its own police and fire departments. Sherman also has its own elementary school, health care professionals and health care facility. In addition, it has churches and retail establishments. It points out that Sherman is not part of the Springfield Urbanized Area and that its proposal would not place a city grade signal to 50% or more of the Urbanized Area, and that thus the Commission would not require a showing that the community is independent of the larger area using the factors outlined in *Faye and Richard Tuck*.⁴ In any event, even if such a showing were required, petitioner states that the community would be found to be independent of the Springfield, Illinois Urbanized Area. Petitioner states that if granted, it will promptly apply for and build the facility once the change of community is granted.

5. In opposition, P&M and Long Nine each state that the Commission should deny the change of community because it will not serve the public interest. They state that the change of community will contravene Section 307(b) of the Communications Act, as amended because the relative sizes of the communities should favor retention of the license in the larger community of Lincoln. Both opponents claim that the change involves a migration into the Springfield Urbanized Area. Long Nine concedes that Sherman is outside the urbanized area, but suggests that it will be included in it in the 2000 U.S. Census. P&M states that the licensee has been moving in this direction over time, noting that it changed transmitter site to move closer to Springfield. Each states that the station should not be allowed to leave Lincoln because the two remaining services are inadequate to provide local service: Station WLLM operates with limited (35 watts) nighttime service and noncommercial Station WLN(FM), which is licensed to serve Lincoln College, is only operated when students choose to operate it. Long Nine details the characteristics of Lincoln as a thriving community and argues that this community depends greatly on its only fulltime service. P&M agrees that without a fulltime radio station the community will be adversely affected.

6. Petitioner opposes the allegations in the oppositions, stating that they were filed only to delay resolution of its proposal.⁵ It disputes Long Nine's assertion that Sherman will be included in the Springfield Urbanized Area in the 2000 Census as rank speculation. It argues that because Sherman is outside the Urbanized Area and proposes to operate from a site which would cover only 42% of the Urbanized Area, there is no requirement that it submit a *Tuck* analysis to prove that Sherman is independent of the Springfield Urbanized Area. It disputes Long Nine's suggestion that the Commission attribute the Springfield stations to Sherman when conducting its Section 307(b) analysis. Finally, it also disputes P&M's suggestion that it has ignored its obligations Sherman by changing transmitter site.

7. With respect to the remaining service in Lincoln, petitioner argues that the Commission considers AM daytime stations to constitute local service, and points out that Station WLLM(AM) in Lincoln has enough nighttime power to cover 80.4% of the population within the city limits of Lincoln, which it argues is full-time service. It states that it was unaware of the operating status of WLN(FM).

8. We will grant the change of community. As a preliminary matter, although we acknowledge the concerns raised in the oppositions concerning loss of service to the community of Lincoln, we believe that the change of community will serve the public interest as a preferential arrangement of allotments. Under priority three of the FM Allotment priorities, the reallocation of Channel 230B1 to Sherman, as the community's first local transmission service, would be preferred to the retention of the channel at Lincoln, which would serve priority four, since Lincoln has other local

⁴ 3 FCC Rcd 5374 (1988).

⁵ Although petitioner raises issues of abuse, we will not address them because there is no substantiation for them other than circumstantial.

transmission service. Even if Station WLNK(FM) is off the air, we consider a station such as WLLM(AM) to constitute local transmission service.⁶ We also acknowledge that it does place some nighttime signal over the community, albeit minimal.⁷

9. We have determined that Sherman is a community for allotment purposes. It is recognized by the census, has an elected government, and has many other indicia of community status. Although the opponents raise concerns that this is a move into an Urbanized Area, and we recognize that Sherman is close to the Springfield Urbanized Area, the law is well settled on this subject. Under the policy set forth in our *Report and Order* in MM Docket No. 91-25 (Headland, Alabama and Chatahoochee, Florida),⁸ an analysis using the factors in *Tuck* is not required because Sherman is not part of the Urbanized Area and petitioner not propose a facility that would provide a city grade signal to 50% or more of the Urbanized Area. Although opponents suggest that Sherman will be made part of the Springfield Urbanized Area in the new census, the 2000 U.S. Census Urbanized Area designations have not been released and we therefore we cannot make our determination based on speculation whether Sherman will be considered part of the Springfield Urbanized Area in the future.

10. With respect to the relative population gains and losses, we believe that overall there is a public interest benefit from the change of community, despite the fact that there will be a net loss of service to approximately 2000 persons from petitioner's proposed site. All of the persons in the loss area receive at least 5 reception services. Our analysis shows that from petitioner's site there is an area of approximately 42.5 square kilometers with a population of 477 persons that will gain a fifth service once the change of community takes place. We believe that this fact, combined with the small net loss and the fact that the entire loss area is well served with five or more services is adequate justification for a finding that the change of community is in the public interest.

11. Channel 230B1 can be allotted at Sherman at petitioner's proposed site 13 kilometers (8.1miles) north of the community.⁹

12. 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 May 6, 2002, 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:

<u>Community</u>	<u>Channel Number</u>
Lincoln, Illinois	---
Sherman, Illinois	230B1

13. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

Gary S. Smithwick	David D. Oxenford
Arthur V. Belendiuk	Paul A. Cicelski
5028 Wisconsin Avenue, N.W.	Shaw Pittman LLP

⁶ See *Fredericksburg and Helotes, Texas*, 10 FCC Rcd 6580 (1995) *recon. granted*, 11 FCC Rcd 10516 (1996); *Mullins and Briarcliff Acres, South Carolina*, 14 FCC Rcd 10516 (1999).

⁷ WLLM(AM), Channel 1370 kHz, operates at 1KW days, 35 watts nights.

⁸ 10 FCC Rcd 10352 (1995).

⁹ The coordinates for Channel 230B1 at Sherman are 40-00-09 NL and 89-39-35 WL.

Suite 301
Washington, DC 20016
(counsel to petitioner)

2300 N Street, N.W.
Washington, D.C. 20037
(counsel to Long Nine, Inc.)

Bob Metz
P&M Communications
527 Woodlawn Road
Lincoln, Illinois 62656

14. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Saga Communications of Illinois, Inc., for Station WHMX(FM) IS MODIFIED to specify operation on Channel 230B1 at Sherman, Illinois, 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.

15. 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 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, Saga Communications of Illinois, Inc., is required to submit rule making fees in addition to the fees required for the applications to effectuate the changes of community from Lincoln to Sherman, Illinois.

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

17. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau at (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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