

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

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In the Matter of)
)
Amendment of Section 73.606(b),)
TV Table of Allotments,) MM Docket No. 01-148
TV Broadcast Stations, and) RM-10141
Section 73.622(b), Table of Allotments,)
Digital Television Broadcast Stations)
(Campbellsville and Bardstown, Kentucky))

REPORT AND ORDER
Proceeding Terminated)

Adopted: June 21, 2004

Released: July 9, 2004

By the Chief, Video Division:

1. The Video Division has before it a *Notice of Proposed Rule Making*¹ issued at the request of Louisville Communications, LLC, licensee of Station WBKJ(TV), Campbellsville, Kentucky ("Petitioner"), requesting the reallocation of Television Channel 34 and DTV Channel 19 from Campbellsville to Bardstown, Kentucky. Bardstown has no television stations or vacant allotments. In response to the *Notice*, Petitioner filed comments restating its intention to effectuate the changes requested in the petition. In addition, Independence Television Company ("Independence"), licensee of Stations WDRB-TV, Louisville, Kentucky, and WFTE(TV), Salem, Indiana, filed comments opposing the change of community. Petitioner and Independence each filed reply comments.

2. Petitioner filed its petition pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other parties the opportunity to file competing expressions of interest.² Because this reallocation involves a determination of which of two communities should retain or receive its only local television service, this proposal falls within the second of the Television allotment priorities, which are set forth in the *Television Sixth Report and Order*.³

¹ *Campbellsville and Bardstown, Kentucky*, 16 FCC Rcd 13276 (MMB 2001).

² See *Change of Community Report and Order*, 4 FCC Rcd 4870 (1989), recon granted in part, 5 FCC Rcd 7094 (1990).

³ These priorities are: 1) To provide at least one television service to all parts of the United States. 2) To provide each community with at least one television broadcast station. 3) To provide a choice of at least two television services to all parts of the United States. 4) To provide each community with at least two television broadcast stations. 5) Any channels which remain unassigned under the foregoing priorities will be assigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities. See *Sixth Report and Order, Television Table of Assignments* ("Television Sixth Report and Order"), 41 FCC 148, 167 (1952).

3. In its comments, Petitioner states that pursuant to the analysis set forth in our decisions in *Huntington Broadcasting Co. v. FCC*⁴ and *Faye and Richard Tuck, Inc.*,⁵ Bardstown, Kentucky is an independent community and not interdependent with the Louisville, Kentucky Urbanized Area of which it is a part. Accordingly, Petitioner contends that the proposed Bardstown reallocation deserves a first local service preference. Petitioner also alleges that the reallocation would not deprive Campbellsville of its sole local transmission station because Station W04BP, Class A LPTV station, is licensed to Campbellsville University.⁶ Citing the Commission's decision in *Ardmore, Oklahoma and Sherman, Texas*,⁷ it argues that its proposal should be granted because its proposal is mutually exclusive with its current operation, it proposes no change of transmitter site and therefore no loss of reception service, will provide Bardstown with its first local transmission service, and will continue to serve the community of Campbellsville with a city grade signal. With respect to the reallocation of DTV Channel 19, Petitioner notes that the station is unbuilt and therefore would not constitute the removal of an existing service.

4. In its opposition, Independence states that the reallocation should be denied because the removal of Campbellsville's sole local television service would disserve the public interest and is in contravention of longstanding Commission precedent and policy. It argues that Campbellsville is a thriving community with a 2000 U.S. Census population of 10,498 persons which has come to rely on the service of this station. It further argues that there are no exceptional circumstances to justify a waiver of the prohibition on the removal of the sole local service. Specifically, Independence maintains that there is no showing that the communities are indistinguishable as in *Los Angeles and Norwalk, California*,⁸ and there is no showing that the licensee has established a longstanding local presence in the proposed community or a commitment to provide service to the licensed community as in *Ardmore and Sherman, Oklahoma*.⁹

5. Independence also argues that Class A stations should not be considered a "local" service for the purpose of the TV Allotment priorities because this type of station is not given the same treatment in the Commission's rules and policies as full power stations. First, Class A stations are limited to operation at severely reduced power and cover a small geographic area that cannot duplicate the service area of a full-power station. Second, they are not given mandatory carriage on cable systems. Third, they can be subject to displacement by certain full power analog and digital stations. Fourth, they have less flexibility in locating their main studios.

6. In its reply comments, Petitioner states that Station W04BP was granted Class A status. It reiterates its arguments that Station W04BP should be considered a local service for purposes of the TV Allotment priorities and thus Campbellsville would not be deprived of its sole local TV service if the change of community were granted.

⁴ *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951).

⁵ *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988).

⁶ Station W04BP was granted Class A status during the pendency of this rulemaking.

⁷ See *Ardmore and Sherman, Oklahoma*, 7 FCC Rcd 4846 (1992).

⁸ See *Los Angeles and Norwalk, California*, 6 FCC Rcd 5317 (MMB 1991).

⁹ See *Ardmore and Sherman, Oklahoma*, 7 FCC Rcd 4846 (1992).

7. We will deny the reallocation. We continue to believe that this is a proposed removal of a sole local service. As an initial matter, we note that the Commission has not established that Class A Television stations are local transmission services for purposes of the TV Allotment priorities and we thus are not able to consider Class A Station W04BP to be a local service for these purposes. Class A Television Stations are not given full protection by all other stations; they are limited to very low power; finally, they have different main studio requirements from full power stations.

8. Having determined that this proposal constitutes the removal of the sole local transmission service, we also believe that the public interest would not be served by the removal of that service. As we stated in the *Change of Community* proceeding, we are very reluctant to remove a community's sole local transmission service absent countervailing public interest considerations.¹⁰ In this case, the public interest factors given in support of the proposal are that the original community will continue to be served, that the community of Bardstown is growing, has historical significance, and is independent of the Urbanized Area of which it is a part. We note that both communities are approximately the same size. Further, we do not dispute the community status of Bardstown. However, in *Change of Community*, we declined to consider continued service to the original community as a factor in favor of a licensee seeking to change community of license because we have no way of ensuring that the licensee would continue to provide that coverage into perpetuity.¹¹ As Petitioner acknowledges, it plans to use a different site for DTV Channel 19, so there is no indication that the station is technically limited to an area which would require its continued coverage of Campbellsville. This is a different situation from *Ardmore, Oklahoma and Sherman, Texas*.¹² In that case, we did consider continued service to the original community because the licensee was constrained by spacing requirements from making any significant movement from its existing site. In this case, we have no such limitation, and therefore we do not consider continued service to Campbellsville as a factor in favor of this proposal.

9. A copy of this *Report and Order* shall be sent by the Secretary of the Commission, to each party, or its counsel or consultant, as follows:

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¹⁰ See *Change of Community: Report and Order*, 4 FCC Rcd at 4874 (1989), and *Change of Community: Memorandum Opinion and Order* in MM Docket No. 88-526 5 FCC Rcd at 7096-7 (1990).

¹¹ See *Change of Community: Report and Order*, 4 FCC Rcd at 4873 (1989).

¹² *Ardmore, Oklahoma and Sherman, Texas*, 7 FCC Rcd 4846 (1992).

10. IT IS ORDERED That the petition for rulemaking filed by Louisville Communications, Inc. IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara Kreisman
Chief, Video Division
Media Bureau