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BEFORE THE
Federal Communications Commission
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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-248
Table of Allotments,)
FM Broadcast Stations) RM-11262
(Midway, Falmouth and) RM-
Owingsville, Kentucky;)
West Portsmouth, Ohio))

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: John A. Karousos, Assistant Chief,
Audio Division, Media Bureau

COUNTERPROPOSAL AND COMMENTS

West Portsmouth Broadcasting (WPB), by its attorney, hereby respectfully submits this Counterproposal in response to the **Notice of Proposed Rule Making and Order to Show Cause** in the above-captioned matter, DA 05-2219, 20 FCC Rcd --, released July 29, 2005, and hereby requests that the Commission amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Midway, KY	300A	300A
Falmouth, KY	298A	298A
Owingsville, KY	299A	299A
West Portsmouth, OH		294A

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In support whereof, the following is shown:

Preliminary Statement

1. WPB seeks the allocation of Channel 294A, 106.7 MHz, at West Portsmouth, Ohio as its first local broadcast outlet of any kind. The use of Channel 294A at West Portsmouth is mutually-exclusive with the use of first-adjacent Channel 295A at Owingsville (see allocation study in Exhibit A), but is fully spaced to all other existing stations, construction permits, minor change applications and allocations.

2. WPB hereby states that, should the Commission grant the changes to the FM Table of Allotments proposed herein, it will promptly apply for a construction permit for Channel 294A at West Portsmouth, Ohio. Should that application be granted, WPB would then construct and operate the resulting Class A FM station at West Portsmouth.

Technical Feasibility

3. Exhibit A demonstrates that the proposed changes to the FM Table of Allotments are in full compliance with Section 73.207 of the Commission's Rules, provided that the reference coordinates North 38° 39' 57" Latitude, West 83° 07' 59" Longitude, which are 13.402 km (8.328 mi) southwest (222.31°) of the West Portsmouth coordinates published in the National Atlas (North 38° 45' 18" Latitude, West 83° 01' 45" Longitude). This location provides full-spacing to the

most critical co- and adjacent-channel stations, WVKM(FM), Matewan, West Virginia (clear by 1.12 km), WSRW-FM, Chillicothe, Ohio (clear by at least 1.40 km) and WRLV-FM, Salyersville, Kentucky.

Eligibility of West Portsmouth for Channel 294A

4. West Portsmouth is an unincorporated place in Scioto County, Ohio, but has been found by the federal Bureau of the Census to be a "census designated place". It is listed in the United States Census and had a 2000 Census population of 3,458¹. Exhibit B is a "fact sheet" taken from the www.census.gov website with demographic information pertaining to West Portsmouth. It has the offices of the local Washington Township government and is served by the elementary, middle and high school of the Washington-Nile Local School District, each of which has a West Portsmouth address and are separate from the schools of the nearby city of Portsmouth. It has at least the following churches: Nauvoo United Methodist Church; Our Lady of Sorrow Roman Catholic Church; First Baptist Church of West Portsmouth; Mount Zion Apostolic Church; and West Portsmouth Community of Christ. It has a number of commercial establishments.

5. West Portsmouth's National Atlas reference coordinates are located 3.784 km (2.35 miles) northwest of

¹By contrast, the other communities listed in the caption in this proceeding were found by the 2000 Census to have had a much smaller

the reference coordinates for Portsmouth, Ohio, 2000 census population 20,909. West Portsmouth is separated from Portsmouth by the Scioto River. On information and belief, the area which includes Portsmouth and West Portsmouth has not been classified as an "urbanized area" by the Bureau of the Census (Exhibit C contains a list of "urbanized areas" containing communities in the state of Ohio). Therefore, as we understand the case law, a showing such as that called for in **Faye and Richard Tuck**, 3 FCC Rcd 5374 (1988) would not be required in this case.

6. It is long settled law at the Commission that a "census designated place" is a community for licensing purposes, and can receive a dispositive Section 307(b) preference where a first local service would be established there. **Sunshine Broadcasting, Inc.**, 101 FCC 2d 476 (Rev. Bd. 1985), *review denied*, 1 FCC Rcd 174 (1986), *aff'd by judgment sub nom. L.B.C., Inc. v. FCC*, 865 F.2d 1329 (D. C. Cir. 1988) (determination that Fort Myers Villas CDP, Florida was a community for licensing purposes and was entitled to a dispositive Section 307(b) preference *vis a vis* the larger community of Cape Coral, Florida).

population: Falmouth, KY, population 2,058; Midway, KY, population 1,620; Owingsville, KY, population 1,488.

**West Portsmouth, Ohio Is Entitled to
A Dispositive Section 307(b) Preference**

7. Were this counterproposal to be granted, Midway, Falmouth and Owingsville, Kentucky would each still continue to have a local broadcast outlet of self-expression, while West Portsmouth would be receiving its first local broadcast outlet of any kind.

8. Therefore, a fair, efficient and equitable distribution of broadcast service required by 47 U.S.C. §307(b) requires the allocation of Channel 294A to West Portsmouth, Ohio.

Conclusion

9. West Portsmouth, Ohio is a community to which a commercial FM broadcast frequency may be allotted consistent with all statutes, regulations and policies. The allocation of Channel 294A at West Portsmouth works from a technical standpoint consistent with Sections 73.207 and 73.315 of the Commission's Rules, even with the site restriction described in paragraph 3 above. As has been demonstrated herein, the public interest, convenience and necessity would be better served by the establishment of a first local broadcast service at West Portsmouth, Ohio rather than by a power increase for station WBTF(FM), Midway, Kentucky and change of transmitter site for WKCA(FM), Owingsville, Kentucky.

WHEREFORE, West Portsmouth Broadcasting urges that its Counterproposal in the above-entitled proceeding **BE GRANTED** and that Channel 294A **BE ALLOCATED** to West Portsmouth, Ohio.

Respectfully submitted,

WEST PORTSMOUTH BROADCASTING

By



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August 12, 2005

EXHIBIT A

EXHIBIT B



U.S. Census Bureau

American FactFinder

FACT SHEET

West Portsmouth CDP, Ohio

Census 2000 Demographic Profile Highlights:

General Characteristics - show more >>	Number	Percent	U.S.		
Total population	3,458	100.0	100%	map	brief
Male	1,639	47.4	49.1%	map	brief
Female	1,819	52.6	50.9%	map	brief
Median age (years)	35.5	(X)	35.3	map	brief
Under 5 years	202	5.8	6.8%	map	
18 years and over	2,562	74.1	74.3%		
65 years and over	485	14.0	12.4%	map	brief
One race	3,415	98.8	97.6%		
White	3,354	97.0	75.1%	map	brief
Black or African American	3	0.1	12.3%	map	brief
American Indian and Alaska Native	51	1.5	0.9%	map	brief
Asian	2	0.1	3.6%	map	brief
Native Hawaiian and Other Pacific Islander	0	0.0	0.1%	map	brief
Some other race	5	0.1	5.5%	map	
Two or more races	43	1.2	2.4%	map	brief
Hispanic or Latino (of any race)	3	0.1	12.5%	map	brief
Household population	3,458	100.0	97.2%	map	brief
Group quarters population	0	0.0	2.8%	map	
Average household size	2.53	(X)	2.59	map	brief
Average family size	2.96	(X)	3.14	map	
Total housing units	1,472	100.0	100.0%	map	
Occupied housing units	1,368	92.9	91.0%		brief
Owner-occupied housing units	1,038	75.9	66.2%	map	
Renter-occupied housing units	330	24.1	33.8%	map	brief
Vacant housing units	104	7.1	9.0%	map	
Social Characteristics - show more >>	Number	Percent	U.S.		
Population 25 years and over	2,264	100.0			
High school graduate or higher	1,590	70.2	80.4%	map	brief
Bachelor's degree or higher	115	5.1	24.4%	map	
Civilian veterans (civilian population 18 years and over)	381	14.8	12.7%	map	brief
Disability status (population 21 to 64 years)	601	30.6	19.2%	map	brief
Foreign born	5	0.1	11.1%	map	brief
Male, Now married (population 15 years and over)	767	59.1	56.7%		brief
Female, Now married (population 15 years and over)	805	56.0	52.1%		brief
Speak a language other than English at home (population 5 years and over)	81	2.5	17.9%	map	brief
Economic Characteristics - show more >>	Number	Percent	U.S.		
In labor force (population 16 years and over)	1,549	57.5	63.9%		brief
Mean travel time to work in minutes (population 16 years and over)	23.5	(X)	25.5	map	brief
Median household income (dollars)	27,668	(X)	41,994	map	
Median family income (dollars)	31,281	(X)	50,046	map	
Per capita income (dollars)	12,345	(X)	21,587	map	
Families below poverty level	193	18.9	9.2%	map	brief
Individuals below poverty level	766	22.1	12.4%	map	
Housing Characteristics - show more >>	Number	Percent	U.S.		
Single-family owner-occupied homes	847	100.0			brief
Median value (dollars)	40,700	(X)	119,600	map	brief
Median of selected monthly owner costs	(X)	(X)			brief

With a mortgage	570	(X)	1,088	map
Not mortgaged	222	(X)	295	

(X) Not applicable.
Source: U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)

EXHIBIT C

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Table 5-5: Highway, Demographic, and Geographic Characteristics of Urbanized Areas in Ohio: 2000

	Federal-aid urbanized area ¹	Total roadway miles	Total DVMT (thousands)	Estimated population (thousands)	Net land area (square miles)	Persons per square mile	Miles of roadway per thousand persons	Total DVMT per capita	Total estimated freeway lane miles ²	Average daily traffic per freeway lane mile
:: Quick Vote	Cleveland	5,530	37,800	1,783	838	2,128	3.1	21	1,279	13,511
What do you think of our redesigned website? <input type="radio"/> Excellent <input type="radio"/> Good <input type="radio"/> Fair <input type="radio"/> Poor <input type="button" value="Vote"/> <input type="button" value="View results"/>	Cincinnati, OH-KY	4,887	32,605	1,176	630	1,867	4.2	28	972	16,194
	Columbus	3,426	24,731	940	476	1,975	3.6	26	859	13,851
	Dayton	3,102	16,282	597	369	1,618	5.2	27	467	12,308
	Akron	2,696	13,026	544	356	1,528	5.0	24	422	12,604
	Toledo, OH-MI	2,121	11,830	500	255	1,961	4.2	24	319	12,615
	Youngstown-Warren	1,821	7,269	379	193	1,964	4.8	19	193	8,403
	Canton	1,543	5,054	248	160	1,550	6.2	20	142	9,810
	Lorain-Elyria	1,027	5,287	236	232	1,017	4.4	22	235	8,495
	Huntington-Ashland, WV-KY-OH	1,038	3,944	174	104	1,673	6.0	23	172	6,642
	Hamilton	432	1,984	118	61	1,934	3.7	17	14	5,497
	Steubenville-Weirton, OH-PA-WV	482	U	101	80	1,263	4.8	U	138	4,621
	Middletown	458	2,837	95	81	1,173	4.8	30	83	11,385
	Springfield	399	1,523	85	45	1,889	4.7	18	23	7,950
	Mansfield	438	1,258	80	63	1,270	5.5	16	59	5,251
	Lima	407	1,612	70	57	1,228	5.8	23	42	8,975
	Parkersburg, WV-OH	291	1,176	60	42	1,429	4.9	20	3	7,125
	Wheeling, WV-OH	481	U	59	55	1,073	8.1	U	107	6,476
	Newark	268	883	57	32	1,781	4.7	16	36	7,021
	Sharon, PA-OH	330	868	49	50	980	6.7	18	30	4,336

¹ A "federal-aid urbanized area" is an area with 50,000 or more persons that, at a minimum, encompasses the land area delineated as the urbanized area by the U.S. Census Bureau. Areas are ranked by population. ² Lane miles estimated by the Federal Highway Administration (FHWA).

KEY: DVMT = daily vehicle-miles of travel; U = data are unavailable.

SOURCE: U.S. Department of Transportation, Federal Highway Administration, *Highway Statistics, 2000*, Washington, DC: 2001, available at <http://www.fhwa.dot.gov/ohim/ohimstat.htm> as of Dec. 6, 2001.



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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Counterproposal and Comments" were served by first-class United States mail, postage prepaid, on this 12th day of August, 2005 upon the following:

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