

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

MAILED

MAY 08 2006

FCC Mail Room

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 05-269  
Table of Allotments, ) RM-11267  
FM Broadcast Stations. )  
(Allegan, Otsego and Mattawan, Michigan) )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 5, 2006

Released: May 8, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice"),<sup>1</sup> issued at the request of Forum Communications, Inc. ("Petitioner"), licensee of Station WZUU, Channel 222A, Allegan, Michigan. Petitioner filed comments. No counterproposals or other comments were received in response to this proceeding.

2. **Background.** The *Notice* proposed the substitution of Channel 223A for Channel 222A at Allegan, reallocation of Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modification of the FM Station WZUU license accordingly.<sup>2</sup> To prevent removal of Allegan's sole local service, the *Notice* also proposed the reallocation of co-owned Station WQXC-FM, Channel 265A from Otsego to Allegan, Michigan and modification of the Station WQXC-FM license to reflect this change. Petitioner filed comments, reiterating its expression of interest in the reallocation of Station WZUU(FM) to Mattawan, Michigan and Station WQXC-FM to Allegan, Michigan.

3. **Discussion.** Petitioner filed its request pursuant to 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 without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.<sup>3</sup> To this end, the proposed reallocation of Channel 223A at Mattawan, Michigan is mutually exclusive with the current authorized facilities of FM Station WZUU, Channel 222A, Allegan, Michigan. Moreover, the proposed reallocation of Channel 265A to Allegan, Michigan is mutually exclusive with the current authorized facilities of Station WQXC-FM, Channel 265A at Otsego, Michigan.

4. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential

<sup>1</sup> See *Allegan, Otsego, Mattawan, Michigan*, Notice of Proposed Rule Making, 20 FCC Rcd 15216 (MB 2005).

<sup>2</sup> As stated in the *Notice*, Mattawan is an incorporated community located in Van Buren County with a 2000 U.S. Census population of 2,536 persons. Mattawan has its own elected officials and local government, schools, library, police and fire departments and water distribution system. Mattawan also has a pharmacy, optometrist, community and civic organizations, churches, and numerous commercial establishments. There is a local newspaper, *The Courier Leader* that serves the residents of Mattawan.

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), recon. granted in part, Memorandum Opinion and Order, 5 FCC Rcd 7394 (1990).

arrangement of allotments based upon the FM Allotment priorities.<sup>4</sup> The proposed reallocation of Station WZUU to Channel 223A at Mattawan would provide a first local service, priority (3), while the proposed reallocation of Station WQXC-FM would prevent removal of Allegan's sole local service. In this instance, the retention of Station WQXC-FM at Otsego triggers priority (4), other public interest matters because AM Station WAKV would continue to provide local service at Otsego. As such, the reallocation proposal results in a preferential arrangement of allotments based on priority (3), first local service.

5. Accordingly, we are substituting Channel 223A for Channel 222A at Allegan, reallocating Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modifying the Station WZUU license to reflect this change.<sup>5</sup> A staff engineering analysis determined that the gain area consists of 263,844 persons, whereas the loss area consists of 76,593 persons. In this regard, both areas are well-served with five or more aural services. Mattawan is not located in an urbanized area. Moreover, the reallocation will only cover 42.6 percent of the Kalamazoo Urbanized Area. Under these circumstances, a *Tuck* showing is not required.<sup>6</sup> However, as stated in the *Notice*, Petitioner submitted a *Tuck* showing demonstrating that Mattawan is independent of the Kalamazoo Urbanized Area, warranting a first local preference.

6. Station WQXC-FM is a pre-1989 "grandfathered" short-spaced Class A station. The reallocation of Station WQXC-FM to Allegan does not require the pre-1989 "grandfathered" short-spaced station to change its transmitter site. Therefore, consistent with staff precedent,<sup>7</sup> we are reallocating Channel 265A from Otsego to Allegan, Michigan and modifying the Station WQXC-FM license accordingly to prevent removal of Allegan's sole local service.<sup>8</sup>

7. The reallocation of Station WZUU and Station WQXC-FM are located within 320 kilometers (200 miles) of the U.S.-Canadian border. Canadian concurrence has been requested and approved.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

9. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective June 22, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Allegan, Michigan	265A

<sup>4</sup> 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 priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC Rcd 88, 91 (1988).

<sup>5</sup> Channel 223A can be allotted to Mattawan in conformity with the Commission's rules, provided there is a site restriction of 10.6 kilometers (6.6 miles) southeast at reference coordinates 42-07-45 NL and 85-43-13 WL.

<sup>6</sup> *See Headland, Alabama and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (MMB 1995) and *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1998) ("*Tuck*").

<sup>7</sup> *See Worcester and Westborough, Massachusetts*, Report and Order, 18 FCC Rcd 23750 (MB 2003) and *Fremont and Holton, Michigan*, Report and Order, 14 FCC Rcd 17108 (MMB 1999).

<sup>8</sup> Channel 265A can be allotted to Allegan in compliance with the Commission's rules, at the Station WQXC(FM) existing transmitter site at coordinates 42-30-31 NL and 85-46-08 WL.

Mattawan, Michigan	223A
Ostego, Michigan	-----

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of Forum Communications, Inc. for Station WZUU, Channel 222A, Allegan, Michigan IS MODIFIED to specify operation on Channel 223A at Mattawan, Michigan, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station WZUU 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 47 C.F.R. 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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.
- (d) Operation of Station WZUU on Channel 223A at Mattawan, Michigan, including program test operation pursuant to 47 C.F.R. Section 73.1620, will not be permitted until Station WQXC-FM activates service on Channel 265A at Allegan, Michigan.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the license of Forum Communications, Inc. for Station WQXC-FM, Channel 265A, Otsego, Michigan, IS MODIFIED to specify operation on Channel 265A at Allegan, Michigan at coordinates 42-30-31 NL and 85-46-08 WL subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station WQXC-FM 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 47 C.F.R. 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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, Forum Communications, Inc., licensee of Stations WZUU, Channel 222A, Allegan, Michigan and WQXC-FM, Channel 265A, Otsego, Michigan is required to submit rulemaking fees in addition to the fee required for the applications to effectuate the community of license for Station WZUU to specify operation on Channel 223A

at Mattawan, Michigan and Station WQXC-FM to specify operation on Channel 265A at Allegan, Michigan at the time the Form 301 applications are submitted.

13. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau