

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

MAILED
JUN 27 2006
FCC Mail Room

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-150
Table of Allotments,) RM-11214
FM Broadcast Stations.)
(Norfolk and Windsor, Virginia))

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 21, 2006

Released: June 23, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*¹ issued at the request of Clear Channel Broadcasting, Licenses, Inc., licensee of Stations WKUS(FM), Norfolk, Virginia and WJCD, Windsor, Virginia ("Petitioner"), proposing the reallocation of Channel 299A from Windsor to Norfolk, Virginia, and the reallocation of Channel 287B from Norfolk to Windsor, Virginia. It also requests the modification of the license for Station WKUS(FM) to reflect Windsor as its community of license and the modification of the license of Station WJCD(FM) to reflect Norfolk as its community of license. Petitioner filed a motion for acceptance and late-filed comments reiterating its intention to file applications for each channel and to construct the facilities if the applications are granted. We received no other comments.

2. Petitioner filed these proposals for reallocation 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.² 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 on the FM Allotment priorities.³

3. In support of the petition, Petitioner states that its proposal would serve the public interest, would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in *Change of Community R&O*. First, the proposed allotment of Channel 299A at Norfolk is mutually exclusive with the current use of Channel 299A at Windsor. Second, the proposed allotment of Channel 287B at Windsor is mutually exclusive with the current use of Channel 287B at Norfolk. Third, neither community would be deprived of its sole local aural transmission service. The community of Norfolk, 2000 U.S. Census population 234,403 persons, would continue to be served by 9

¹ See *Norfolk and Windsor, Virginia*, Notice of Proposed Rule Making, 20 FCC Rcd 6322 (MB 2005).

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, ("Change of Community MO &O"), 5 FCC Rcd 7094 (1990).

³ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 91 (1988). 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)].

FM stations and 5 AM stations.⁴ The proposal would retain a first local aural transmission service at Windsor. Finally, Petitioner states that the two reallocations would serve the public interest under Priority (4) because the overall gain in population from the proposed reallocation of Channel 299A from Windsor to Norfolk would be 1,023,941 persons. They argue that while the reallocation of Channel 287B from Norfolk to Windsor would result in a net loss in population of 37,417 persons within the WKUS(FM) 60dBu contour, this loss is more than overcome by the substantial gains of the proposal as a whole, and the entire area is well served by 5 or more other aural services.

4. In further support of the reallocation, Petitioner claims that Windsor has been determined to be qualified as a community by virtue of the allotment of Channel 299A.⁵ Windsor is listed in the 2000 U.S. Census with a population of 933 persons and therefore is presumed to have the status of a community for allotment purposes.⁶

5. We will deny the petition under Priority (4), "Other public interest matters." As we stated in *Change of Community MO&O*, all of our actions with respect to modification of the FM Table of Allotments are guided by the directive of Section 307(b) of the Act to ensure a "fair, efficient and equitable distribution of radio service."

Consistent with longstanding practice applying these residual categories [Priority 4], if the Commission is presented with conflicting options, such as the option of retaining the existing arrangement of allotments or adopting a new arrangement of allotments, it will adopt the proposal which best discharges the Commission's statutory mandate. Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change.⁷

6. Our concerns in this matter are maintaining local service to Windsor and limiting the migration of stations from less populated to urban areas. This proposal requests a change of community of license for Station WJCD(FM), Channel 299A, from the rural community of Windsor, Virginia to Norfolk, Virginia, which is inside the Virginia Beach Urbanized Area. In order to prevent the removal of the sole local service from Windsor, petitioner requests that co-owned Station WKUS(FM), Channel 287B, change its community of license from Norfolk to Windsor. The proposed channel swap would result in an additional service to approximately one million persons, but it will not serve FM Allotment Priorities (1), (2) or (3), *i.e.*, service to white or gray areas, or the provision of first local service. Station WKUS(FM) currently provides 100 percent city grade coverage, 70 dBu signal, over the entire city of Windsor. Reallocation of Channel 287B from Norfolk to Windsor would result in minimal change to the Station WKUS(FM) coverage area, and maintains most of its coverage to Norfolk. A grant of this proposal would merely reposition two co-owned stations and allow the migration of Station WJCD(FM)

⁴ Stations WXMM(FM), WYFI(FM), WVKL(FM), WOWI(FM), WNSB(FM), WHRV(FM), WHRO-FM, WNOR(FM), WNVZ(FM), and AM Stations WNIS(AM), WTAR(AM) WVXX(AM), WYRM(AM), and WJOI(AM) will remain in Norfolk.

⁵ See *Windsor, Virginia*, 2 FCC Rcd 4229 (1987).

⁶ See *Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992), *rec. den.* 13 FCC Rcd 18894 (1998).

⁷ *Change of Community MO&O*, 5 FCC Rcd at 7096.

from its current location which provides service to areas which lie substantially outside the Virginia Beach Urbanized Area into this well served urbanized area. This would have no countervailing public interest benefit other than adding a million listeners to Station WJCD(FM) in an area that is already well served by fifteen transmission services and an abundance of reception services. We cannot make the requisite finding that this would result in a preferential arrangement of allotments as required by *Change of Community MO&O*. In this instance, the population gain, standing alone, does not make the reallocation of Channel 299A from Windsor to Norfolk a preferential arrangement of allotments.

7. IT IS ORDERED That the petition for rule making filed by Clear Channel Broadcasting, Licenses, Inc., IS DENIED.

8. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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