

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-330
Table of Allotments,) RM-9677
FM Broadcast Stations.)
(Kankakee and Park Forest, Illinois))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 14, 2001; Released: March 23, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making (“NPRM”) in this proceeding, 14 FCC Rcd 21286 (1999). Gene Milner Broadcasting Company, Inc., El Dorado Communications, Inc., and Z-Spanish Media Licensing Company, LLC filed comments. For the reasons discussed below, we are reallocating Channel 260B from Kankakee, Illinois, to Park Forest, Illinois, and are modifying the license of Station WRZA(FM) to specify Park Forest as its community of license.

Grandfathered Short-Spacings

2. At the request of Gene Milner Broadcasting Company, Inc., (“petitioner”), former licensee of Station WRZA(FM), the NPRM proposed the reallocation of Channel 260B from Kankakee, Illinois, to Park Forest, Illinois, and the modification of the Station WRZA(FM) license to specify Park Forest, Illinois, as the community of license.¹ Even though the petitioner did not propose a change in transmitter site, the NPRM observed that Station WRZA(FM) is not in compliance with the current spacing requirements set forth in Section 73.207 of the Rules. As such, the proposed Channel 260B allotment at Park Forest would be a short-spaced allotment in contravention of Section 73.207 of the Rules. However, the NPRM recognized that in Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), we permitted such a reallocation of a pre-1964 “grandfathered” short-spaced allotment from Newnan to Peachtree City, Georgia. In addition to involving no change in technical facilities, the rationale for that decision was that “grandfathered” stations were in compliance with our Rules when initially authorized and should be afforded the same opportunity to change their community of license as other stations authorized in conformity with existing Rules. This policy was subsequently expanded to permit stations to change their community of license where other stations had relocated their transmitters closer in to the station under Section 73.215 of the Rules. Killeen and Cedar Park, Texas, 13 FCC Rcd 18790 (1998). In response to the NPRM, the petitioner identified the eight stations that would be short-spaced to a new allotment at Park Forest. Six of these stations are “grandfathered” pre-1964 stations under Newnan and Peachtree City. The

¹ Z-Spanish Media Licensing Company, LLC is now the licensee of Station WRZA(FM).

remaining two the stations relocated closer to Station WRZA(FM) pursuant to Section 73.215 of the Rules under the Killeen and Cedar Park exception. Therefore, we find that these eight pre-existing short-spacings do not preclude grant of the petitioner's change of community rulemaking proposal.

Huntington-Tuck

3. The NPRM in this proceeding noted that the petitioner is proposing to reallocate and change the community of license for its Station WRZA(FM) from Kankakee, a community located outside of the Chicago, Illinois Urbanized Area and the central city of its own Urbanized Area to Park Forest, a community located within the Chicago, Illinois Urbanized Area. The NPRM also explained that the petitioner is not planning to change its transmitter site and will continue to provide a city-grade signal to 100% of the Kankakee, Illinois Urbanized Area, 10% of the Chicago, Illinois Urbanized Area, and less than 40% of the Joliet, Illinois, Urbanized Area. Nevertheless, the NPRM required the petitioner to submit a Huntington-Tuck¹ showing that Park Forest is sufficiently independent of the Chicago, Illinois urbanized area to warrant a first local service under the FM Allotment priorities because Park Forest is located entirely within the Chicago, Illinois Urbanized Area. See, e.g., Malvern and Bryant, Arkansas, 14 FCC Rcd 3576 (1999) (Tuck showing required where proposed community is partially within the relevant Urbanized Area even though the station would only provide a city grade signal to less than 1% of the Urbanized Area). Although the petitioner disagrees that the Huntington-Tuck analysis should be conducted in this case, it nevertheless submitted a Tuck showing. Our review of the petitioner's showing leads us to conclude that Park Forest is sufficiently independent of the Chicago Urbanized Area to warrant a first local service for the reasons that follow.

4. With respect to signal-population coverage (i.e., the degree to which the proposed station could provide service not only to the suburban community but also to the adjacent metropolis, we note that Station WRZA(FM) will place a city-grade signal over only 10% of the Urbanized Area. Second, comparing the size and proximity of the suburban community relative to the central city of the urbanized area, we find that although Chicago is much larger in population than Park Forest, the latter has a population of 24,656 and is located a relatively large distance – 26 miles (43 kilometers) -- from Chicago. On the third and most important factor – independence of the suburban community from the urbanized area – a majority of the eight subfactors support a finding of independence. Specifically, these factors demonstrating independence are the presence of local media (Factor 2); the perception by community leaders and residents that the suburban community is independent from the larger Urbanized Area (Factor 3); a local government and elected officials (Factor 4); commercial establishments, health facilities, and local transportation systems (Factor 6), and the lack of reliance by Park Forest on Chicago for municipal

¹ See Huntington Broadcasting co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951) RKO General, Inc. (KFRC) ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). KFRC and Tuck clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," that is, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the urbanized area of the city. Third, the Commission determines the interdependence of the suburban community with the central city. This third type of evidence involves eight additional factors set forth in Tuck.

services such as police, fire protection, schools, and libraries (Factor 8). The petitioner is entitled to half credit for Factor 5 for a zip code. Consequently, at least 5-1/2 of the eight factors support a finding of independence.

5. As stated in the NPRM, no Tuck showing is required regarding the Joliet, Illinois Urbanized Area because Park Forest is located outside of this Urbanized Area and because the station's city-grade signal will cover less than 50% of this Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Likewise, even though Park Forest is located outside the Kankakee, Illinois Urbanized Area and the level of city-grade coverage is 100%, we will not require a Tuck showing with respect to the Kankakee, Illinois Urbanized Area because the station is not changing its transmitter site and because it is not a migration to this Urbanized Area. Indeed, the station is currently licensed to the central city of this Urbanized Area.

Comparative Analysis

6. Having determined that Park Forest is entitled to a first local service, we must compare the existing and proposed arrangement of allotments as required by the generic proceeding adopting Section 1.420(i) of the Rules. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Retaining the station in Kankakee would result in a seventh local transmission service, triggering priority 4, other public interest matters.² By way of contrast, reallocating and changing the community of license to Park Forest would be a first local transmission service, priority 3, which is a higher priority. Moreover, since the station is not changing its transmitter site, there will be no loss of service. Consequently, the preferential arrangement of allotments is to reallocate Station WRZA(FM) to Park Forest as a first local service.³ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). In granting petitioner's request for a change of community, petitioner will be required to specify its current licensed site for Station WRZA(FM) for any license application in accordance with its representations in this proceeding and in accord with precedent set in similar proceedings. See, e.g., Oceanside and Encinitas, California, 14 FCC Rcd 15302 (1999); and Killeen and Cedar Park, Texas, 15 FCC Rcd 1945 (2000).

Technical Summary

7. An engineering analysis has determined that Channel 260B can be reallocated to Park Forest, Illinois, at petitioner's presently licensed site.⁴ At this site, Station WRZA(FM) will remain short-spaced to Station WUSN(FM), Channel 258B, Chicago, Illinois, Station WSHW(FM), Channel 259B, Frankfort, Indiana, Station WHFB-FM, Channel 260B, Benton Harbor, Michigan, Station WTHI-FM, Channel 260B, Terre Haute, Indiana, Station WJVL(FM), Channel 260B1, Janesville, Wisconsin, Station WIXO(FM), Channel 260A,

² One AM station (Station WKAN), three noncommercial educational stations (WTKC, WTWF, and WONU), and two FM stations (WVLI and WKIF) will remain licensed to the community.

³The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁴ The coordinates for Channel 260B at Park Forest are 41-18-04 North Latitude and 87-49-35 West Longitude.

Bartonville, Illinois, and Station WNND(FM), Channel 262B, Chicago, Illinois, and Station WGLC(FM), Channel 261A, Mendota, Illinois.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective, May 7, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Kankakee, Illinois	224A, 236A
Park Forest, Illinois	260B

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Z-Spanish Media Licensing Company, LLC, for Station WRZA(FM) in Kankakee, Illinois, IS MODIFIED to specify operation on Channel 260B at Park Forest, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WRZA(FM)'s license, BLH-19900117KA, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301). The license or construction permit application filed to implement this rule making must specify its currently authorized site at coordinates 41-18-04 North Latitude and 87-49-35 West Longitude.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-19900117KA, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of 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, Z-Spanish Media Licensing Company, LLC, licensee of Station WRZA(FM), is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

11. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Z-Spanish Media Licensing Company, LLC
1436 Auburn Boulevard
Sacramento, California 95815
(Licensee of Station WRZA(FM))

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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