

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

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

**MEMORANDUM OPINION AND ORDER  
(Proceeding Terminated)**

**Adopted: January 31, 2008**

**Released: February 1, 2008**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by CC Licenses, LLC (“Clear Channel”) directed to the *Report and Order* in this proceeding proposing.<sup>1</sup> For the reasons discussed below, we grant the Petition for Reconsideration.

2. **Background.** At the request of Clear Channel, licensee of Station WKUS, Channel 287B, Norfolk, Virginia, and Station WJCD, Channel 299A, Windsor, Virginia, the *Notice of Proposed Rule Making* proposed the reallocation of Channel 299A from Windsor to Norfolk, Virginia, and the modification of the Station WJCD license to specify Norfolk as the community of license.<sup>2</sup> In order to replace the loss of the sole local service at Windsor, the *Notice* also proposed the reallocation of Channel 287B from Norfolk to Windsor and modification of the Station WKUS license to specify Windsor as its community of license. This request was filed pursuant to Section 1.420(i) of the Commission’s Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>3</sup> *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>4</sup> The *Report and Order* denied the proposed reallocations. In doing so, the staff concluded that it could not make the requisite finding that reallocation channel 299A to a community inside the Virginia Beach Urbanized Area would result in a preferential arrangement of allotments even though the proposal would result in

<sup>1</sup> *Norfolk and Windsor, Virginia*, Report and Order, 21 FCC Rcd 6888 (MB 2006).

<sup>2</sup> *Norfolk and Windsor, Virginia*, Notice of Proposed Rule Making, 20 FCC Rcd 6322 (MB 2005).

<sup>3</sup> *See Modification of FM and TV Authorizations to Specify a New Community of License* (“*Community of License*”), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

<sup>4</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

additional service to significant number of persons. It was the staff determination that it would merely be shifting service from a rural area to a well-served urban area. Clear Channel seeks reconsideration of that determination.

3. **Discussion.** After careful consideration of the entire record in this proceeding, we have determined that the proposed reallocations would, in fact, result in a preferential arrangement of allotments as required by *Community of License*. In doing so, we remain concerned with the potential for stations to migrate from relatively underserved rural areas to well-served urban areas. For this reason, we do not blindly determine that a proposal will result in a preferential arrangement of allotments merely because it will result in service to additional persons. However, this concern is not applicable with respect to the Windsor and Norfolk reallocations. Both Windsor and the 37,417 persons losing service would continue to receive in excess of 30 radio services.<sup>5</sup> Moreover, these changes involve service in and near a large metropolitan area. Finally, Windsor would continue to receive local service from Station WKUS. In light of the above, we find that adoption of these reallocations, which would result in a net gain in service to 1,023,941 persons, is in the public interest. Therefore, we will reallocate Channel 299A from Windsor to Norfolk, Virginia, and modify the license of Station WJCD to specify Norfolk as the community of license.<sup>6</sup> To replace the loss of the sole local service at Windsor, we are reallocating Channel 287B from Norfolk to Windsor, Virginia, and are modifying the Station WKUS license to specify Windsor as the community of license.<sup>7</sup>

4. The Commission will send a copy of this *Memorandum Opinion and Order* to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

5. Accordingly, pursuant to authority contained 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 March 17, 2008, the Table of FM Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Norfolk, Virginia	239B, 254B, 259B, 263B, 275B, 283B, 299A
Windsor, Virginia	287B

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of CC Licenses, LLC for Station WJCD, Channel 299A, Windsor, Virginia, IS MODIFIED to specify Norfolk, Virginia, as the community of license, subject to the following conditions:

<sup>5</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1995); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

<sup>6</sup> The reference coordinates for the Channel 299A allotment at Norfolk, Virginia, are 36-55-26 and 76-15-05.

<sup>7</sup> The reference coordinates for the Channel 287B allotment at Windsor, Virginia, are 36-48-47 and 76-35-57.

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit and commencement of operation of Station WKUS as a Windsor facility, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of CC Licenses, LLC for Station WKUS, Channel 287B, Norfolk, Virginia, IS MODIFIED to specify Windsor, Virginia, as the community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

8. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by the CC Licenses, LLC, IS GRANTED to the extent indicated above.

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

10. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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