

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

MM Docket No. 95-32

In the Matter of

Amendment of Section 73.202(b), RM-8545
Table of Allotments,
FM Broadcast Stations
(Parker and Port St. Joe, Florida)

REPORT AND ORDER

Adopted: December 15, 1995; Released: January 30, 1996

By the Chief, Allocations Branch:

1. Southern Broadcasting Companies, Inc. ("petitioner") is the licensee of Station WPBH(FM), which operates on Channel 233C with Port St. Joe, Florida, as its community of license. On March 4, 1994, petitioner filed a Petition for Rule Making requesting the Commission to amend its FM Table of Allotments, *see* 47 C.F.R. § 73.202(b), to reallocate Channel 233C from Port St. Joe to Parker, Florida, and to modify the station's license accordingly. The Commission subsequently issued a *Notice of Proposed Rule Making*, 10 FCC Rcd 3157 (1995) ("*Notice*"), seeking comment on this proposal. Petitioner filed timely supporting comments. No other comments were filed. For the reasons set forth below, we believe it is in the public interest to amend the FM Table of Allotments as requested by petitioner.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules. This provision permits a licensee to request a change in community of license without facing competing expressions of interest "where the amended allotment would be mutually exclusive with the licensee's . . . present assignment." 47 C.F.R. § 1.420(i). Petitioner's proposal satisfies this criterion and also complies with the Commission's minimum distance separation requirements. *See Notice* at 3157. Petitioner's request satisfies another prerequisite for invoking Section 1.420(i): it will not deprive Port St. Joe "of an existing service representing its only local transmission service." *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4874 (1989) ("*Change of Community R&O*"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*"). In particular, even if we granted petitioner's request, Port St. Joe will continue to receive local aural transmission service from Station WMTO(FM). *Notice* at 3157; Petitioner Comments at 3.

3. While petitioner has cleared these initial hurdles, we still must determine whether its proposed amendment to the FM Table of Allotments is in the public interest and is in accord with our statutory mandate to "make such distribution of licenses [and] frequencies . . . among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b). In making this determina-

tion, we "compare the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments) we will adopt the proposal." *Change of Community R&O*, 4 FCC Rcd at 4873.

4. Specifically, the Commission assesses whether the proposed allotment plan would lead to a preferred distribution of allotments by examining the facilities available in the existing and proposed communities and the relative population of the communities. The need for service concerns both the number of stations that can be received in a given area (reception service) and the availability of local outlets for self-expression in the community (transmission service). The Commission seeks to provide, in order of priority: (1) first full-time aural reception service; (2) second full-time aural reception service; (3) first local transmission service; and (4) other public interest factors. Co-equal weight is given to priorities (2) and (3). *Id.* at 4873 & n.8; *Faye & Richard Tuck, Inc.*, 3 FCC Rcd 5374, 5376 (1988).

5. The first two priorities -- which focus on the *reception* of FM service -- are not at issue in this proceeding because petitioner is not proposing to change WPBH(FM)'s transmission site or channel class. The station will thus serve the same area and population regardless of its designated community of license. *See Elizabeth City, NC, and Chesapeake, VA*, 9 FCC Rcd 3586, 3589 (1994) ("Reception service is not an issue in this proceeding because [petitioner] is not proposing to move its transmitter site, and a change of community of license will cause no discernible difference in the existing reception service."); *Brunswick and Waycross, GA*, 8 FCC Rcd 17, 18 (1992) (same).

6. As to the third priority, petitioner claims that its proposal should be adopted because it will provide the City of Parker with its first local transmission service. As stated in the *Notice*, however, there is an issue as to whether Parker is entitled to such a preference because it falls within the Panama City Urbanized Area. In carrying out its Section 307(b) duties, the Commission normally presumes that every separate community needs at least one local transmission service. But this presumption does not necessarily hold when a community of license is located in a large metropolitan area, *i.e.*, an Urbanized Area designated by the Census Bureau. Rather, in such circumstances, "where integrally related communities constitute a single metropolitan transmission service area, individual communities' needs should be presumed satisfied by the aggregate of stations in that area." *Faye & Richard Tuck, Inc.*, 3 FCC Rcd at 5376-77 (*quoting Beaufort County Broadcasting Co. v. FCC*, 787 F.2d 645, 649 (D.C. Cir. 1986)).

7. The question, then, is whether Parker is so "integrally related" to the Panama City Urbanized Area that it should be credited with all the transmission services in that area and thus denied a first local service preference. In answering this question, the Commission first examines "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. 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, we examine the following eight factors in assessing the interdependence of the suburban community with the central city:

(1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

Elizabeth City, NC, and Chesapeake, VA, 9 FCC Rcd at 3586 n.7.

8. Based on these three general criteria, we conclude that Parker is sufficiently distinct from the Panama City Urbanized area that it warrants a first local transmission service preference. The first criterion -- signal population coverage -- supports this conclusion: while WPBH(FM) will cover all of Parker with a city-grade (70dBu signal), it will place a city-grade signal over only about 3% of Panama City and 30% of the Panama City Urbanized Area. As to the second criterion -- size and proximity of Parker relative to Panama City -- Parker is in the Panama City Urbanized Area and is approximately 4 miles from Panama City. With a population of 4,598, Parker is one-seventh the size of Panama City, which has a population of 34,378.¹ While these factors run counter to treating Parker as a distinct community, petitioner points out that Parker is not contiguous with Panama City. It is physically separated from Panama City by two other suburban communities -- Springfield (population 8,715) and Callaway (population 12,253). Moreover, we believe it is significant that Springfield and Callaway -- both of which, like Parker, are suburban communities located within the Panama City Urbanized Area -- have each been allotted FM stations.² *Id.* Indeed, in the comparative proceeding awarding a construction permit for a new FM station in Callaway, the Administrative Law Judge found that Callaway and Springfield "are distinct communities with separate local governments and governmental services." *Warmac Communications, Inc.*, 103 FCC 2d 1222, 1233 (1985).

9. Evidence regarding the eight factors under the third criterion also supports treating Parker as a separate community. To be sure, a number of these factors point the other way. Parker does not have its own telephone directory (factor 5), and apparently does not have a local newspaper (factor 2). In addition, Parker is included in the Panama City Metro Market by Arbitron, suggesting that Parker may not be in a separate advertising market (factor 7). The majority of the eight factors, however, indicate that Parker is distinct from the Panama City Urbanized Area. It is a separately incorporated city which has its own local

government with a full-time mayor, a paid city clerk, and an elected city commission (factor 4). Petitioner Comments at 11, Exh. 1. Parker also provides its own municipal services to its citizens (factor 8). It has a full-time fire chief, police department, parks department, and street department. It has its own library, and provides its residents with water and sewer services through a franchise with Bay County. According to petitioner, "Parker does not depend upon Panama City for any services it provides to its citizens." *Id.* at 12, Exh. 1 & 2. While the record is unclear as to how many of Parker's residents work locally (factor 1), petitioner has provided evidence that Parker has over 500 businesses, restaurants, shopping centers, and professional offices (factor 6). *Id.* at 9, 11, Exh. 1. It also has its own churches and civic organizations, and is in the process of constructing a major athletic facility. *Id.* In addition, Parker has its own zip code (factor 5).

10. The record indicates that Parker's leaders and residents view themselves as living in a distinct community (factor 3). Petitioner has submitted letters from the mayors of both Parker and Panama City attesting to the independence of Parker, which was organized in 1835 and is the oldest community in Bay County. See Petitioner's Comments, Exh. 1 (Letter of Brenda Hendricks, Mayor of Parker) ("The City of Parker did not come about due to the urban sprawl of Panama City' and Parker is in no way dependent upon the City of Panama City."); Exh. 2 (Letter of Girard Clemons, Jr., Mayor of Panama City) ("[T]he City of Parker is not part of Metropolitan Panama City or of the urban sprawl of Panama City. . . . Parker is a wholly functioning independent city."). The residents of Parker and surrounding communities have rejected proposals to consolidate municipal services (fire, police, water, sewer, etc.) into a single, county-wide service for cost-savings purposes. *Id.* at 10, Exh. 4. This further indicates that the citizens of Parker, as well as its surrounding cities, see themselves as living in independent communities.

11. In sum, while some factors suggest some interdependence between Parker and the Panama City Urbanized Area, on balance we find that Parker should be treated as a distinct community under the totality of evidence concerning the eight factors under the third criterion described above as well as the first and second criteria, *i.e.*, signal population coverage and size and proximity to the Urbanized Area. See *Elizabeth City, NC, and Chesapeake, VA*, 9 FCC Rcd at 3589 (making similar finding). Parker is thus entitled to a first local transmission service preference.

12. In the circumstances of this case, we believe this preference outweighs the loss of a transmission service to Port St. Joe. As noted above, Port St. Joe will continue to enjoy the full-time local service of WMTO(FM), another Class C FM station. Nor is this a case where the present community of license has a larger population than the proposed community of license. Indeed, Parker, with a population of 4,598, is larger than Port St. Joe, which has a population of 4,044. We will consequently grant petitioner's request and amend the FM Table of Allotments and modify the license for Station WPBH(FM) to specify Parker, Florida, as its community of license on Channel 233C in lieu of its use at Port St. Joe, Florida. A staff engineering analysis has determined that Channel 233C can be allotted to Parker, Florida, in compliance with the Com-

¹ All population figures are from the 1990 U.S. Census.

² WRBA(FM) is allotted to Callaway, and WYOO(FM) and

WRBA(FM) are allotted to Springfield.

mission's minimum distance separation requirements with a site restriction of 47.9 kilometers (29.8 miles) southeast at Station WPBH(FM)'s presently licensed transmitter site.³

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 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 15, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

City	Channel No.
Parker, Florida	233C
Port St. Joe, Florida	228C2

14. IT IS FURTHER ORDERED that, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WPBH(FM) IS MODIFIED to specify operation on Channel 233C at Parker, Florida, in lieu of Port St. Joe, Florida, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the license except the community, 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); and

(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 its license except for the community as specified above and a license application (FCC Form 302) is filed within ten (10) days of commencement of program tests.

15. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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

³ The coordinates for Channel 233C at Parker, Florida, are

North Latitude 29-49-09 and West Longitude 85-15-34.