

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

MM Docket No. 93-169

In the Matter of  
Amendment of Section 73.202(b) RM-8246  
Table of Allotments,  
FM Broadcast Stations.  
(Walterboro and Ridgeville,  
South Carolina)

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

Adopted: January 24, 1996; Released: February 7, 1996

By the Chief, Allocations Branch:

1. At the request of Gresham Communications, Inc. ("petitioner"), permittee of Station WPAL-FM, Channel 265C3, Walterboro, South Carolina, the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4183 (1993), proposing the reallocation of Channel 265C3 from Walterboro to Ridgeville, South Carolina, and the modification of Station WPAL-FM's construction permit accordingly.<sup>1</sup> Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Ridgeville. Opposing comments were filed by Millennium Communications of Charleston, Inc. ("Millennium"), licensee of Station WWVZ-FM, Channel 227C2, Summerville, South Carolina. Millennium also filed a supplement to its comments.<sup>2</sup> Petitioner and Millennium filed reply comments.

2. *Background.* Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which allows a change in community of license without facing competing expressions of interest. 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). In support of its proposal, petitioner states that Ridgeville (population 1,625)<sup>3</sup> is an incorporated community in Dorchester County with a population of 83,060 persons. Petitioner also states that Ridgeville is gov-

erned by a town council, has its own police and fire departments, post office, businesses, churches and school. Ridgeville has no local aural transmission service, while Walterboro receives local transmission service from Stations WONO(FM) and WALD(AM). Neither Ridgeville nor Walterboro is located in an Urbanized Area.

3. In the *Notice*, we stated that petitioner does not seek to relocate its station from a rural to an urban community, but rather to another rural community, and the reallocation could enable Station WPAL-FM to operate omnidirectionally. However, because petitioner seeks to relocate its transmitter site, and in light of the Commission's expressed concern over the loss of existing service,<sup>4</sup> petitioner was requested to provide information concerning the gain and loss areas created by the reallocation of Channel 265C3 to Ridgeville, South Carolina. Additionally, we requested the petitioner to provide information regarding the reception services now available in the gain and loss areas.

4. *Comments.* In its comments, petitioner contends that the public interest would be served by granting its proposal. Petitioner states that Station WPAL-FM currently operates with a directional antenna from a site east-southeast of Walterboro and is unable to provide Ridgeville with a 70 dBu signal. If Channel 265C3 is reallocated to Ridgeville, petitioner states that Station WPAL-FM will be able to relocate its transmitter, operate omnidirectionally, and provide the community with its first local aural transmission service. Petitioner also states that, if Channel 265C3 is reallocated to Ridgeville, no white or gray areas would be created by the move of Station WPAL-FM's 60 dBu service contour.<sup>5</sup> Furthermore, petitioner claims that both the gain and loss areas have five or more reception services and are considered to be well-served. Petitioner also asserts that the reallocation will enable Station WPAL-FM to greatly increase the number of persons served within its 60 dBu service contour. Petitioner maintains that at its present site, operating with a directional antenna south of Walterboro, there are 206,405 persons within the station's service contour. If reallocated to Ridgeville, the number of persons within the 60 dBu service contour would increase to 295,979 persons, representing a net increase of 43.4% in population gain. Petitioner asserts that the reallocation of Channel 265C3 Ridgeville would also create a loss of 60 dBu service to 9,348 persons, while 89,574 persons will gain new 60 dBu service, representing a net gain of 80,226 persons receiving additional service.

5. Petitioner states that the loss area is sparsely populated and is primarily made up of coastal marsh or fresh water swamp in lower Colleton and Charleston Counties. Consequently, the loss area does not contain any incorporated

<sup>1</sup> The *Notice* erroneously referred to the modification of Station WPAL-FM's license for Channel 265C3 in lieu of construction permit. Nonetheless, on March 16, 1995, Station WPAL-FM filed an application for license (File No. BPH-950316KA) to specify operation on Channel 265C3 at Walterboro, South Carolina, which is pending the resolution of the instant proceeding.

<sup>2</sup> Millennium submitted the original copy of the Declaration of Dean H. Mutter, Executive Vice President of Station WWVZ-FM.

<sup>3</sup> Population figures taken from the 1990 U.S. Census.

<sup>4</sup> In evaluating proposals to change a station's community of license, the Commission has stated: "The public has a legitimate expectation that existing service will continue, and this expecta-

tion is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See *Community of License MO&O*, *infra*, 5 FCC Rcd at 7097.

<sup>5</sup> For purposes of FM allotments, white area is defined as the geographical area that is not served by any full-time aural service, and gray area is one that is served by only one full-time aural service.

communities over 1,000 persons.<sup>6</sup> On the other hand, petitioner states that the gain area is heavily populated and includes a number of incorporated communities. At its present Walterboro site, Station WPAL-FM's 60 dBu service signal covers 4,591 square kilometers (1,773 square miles). If reallocated to Ridgeville, the petitioner contends that the station's 60 dBu service signal would encompass 4,811 square kilometers (1,858 square miles). Petitioner further contends that operating directionally from its present site, Station WPAL-FM must suppress radiation in one direction to avoid prohibited overlap with Station WLVH(FM), Channel 266C2, Hardeeville, South Carolina.<sup>7</sup> Petitioner maintains that directional operation of its station reduces the land area served by the 60 dBu service signal. For the reasons stated above, petitioner urges the Commission to grant its proposal to reallocate Channel 265C3 from Walterboro to Ridgeville, South Carolina.

6. In its opposing comments, Millennium argues that the reallocation of Channel 265C3 from Walterboro to Ridgeville, South Carolina, will not further the public interest nor the policy goals of the FM allotment priorities. Millennium asserts that application of the factors set forth in *RKO General, Inc. (KFRC)*, *infra*, shows that Ridgeville does not warrant a first local service preference. Millennium contends that petitioner's objective is to serve a greater number of persons while operating nondirectionally. In effect, states Millennium, the "real aim is to serve the greener pastures of the Charleston Urbanized Area and environs." Millennium states that the reallocation would deprive Walterboro of its second local full-time FM transmission service to add another signal to the already well-served Charleston Urbanized Area. Accordingly, Millennium urges that Station WPAL-FM's reallocation to Ridgeville be denied because Walterboro is the more deserving community under the Commission's 307(b) analysis.

7. In its reply comments, petitioner reiterates the arguments advanced in its comments. Additionally, contrary to Millennium's allegation, petitioner states that Station WPAL-FM is "severely" limited as to an antenna site location. Petitioner further states that its original application for a construction permit, filed in May of 1992, was disapproved by the Federal Aviation Administration ("FAA"). At that location, petitioner avers that the station could have operated nondirectionally and remained licensed at Walterboro. However, at the petitioner's construction permit site, FAA would allow only a tower constructed 155 feet above ground level. Petitioner maintains that the antenna height allowed with such a short tower would not have enabled the station to provide city grade (70 dBu) coverage to Walterboro. Petitioner submits a letter from the FAA showing the problems with the first antenna site were caused by the Instrument Flight Rules' ("IFR") approaches to the Walterboro and Summerville airports. FAA considers the IFR's approaches as sensitive because they are used in periods of poor visibility. Station WPAL-FM later located a tower site which was slightly short-spaced to Station WLVH(FM) at Hardeeville, South Carolina, and amended its construction permit accordingly. Although the new site was near the Beaufort Marine Air Station and the Charleston Air Force Base, the FAA allowed a tower height not to

exceed 354 feet above ground level. However, an investigation revealed that from the new site, the station's power would be significantly reduced. Thus, petitioner asserts that Millennium's claim that there is "substantial" area where Station WPAL-FM can operate nondirectional is totally inaccurate.

8. Moreover, petitioner states that its proposed relocation to Ridgeville meets all of the Commission's technical requirements and the criteria set forth in *Change of Community R&O and MO&O*, *supra*. In addition, petitioner alleges its initial efforts to locate a fully-spaced site at Walterboro that met FAA requirements demonstrate there is no intent to "serve the greener pastures of the Charleston Urbanized Area and environs." Therefore, petitioner avers that Millennium's arguments are speculative and questions Millennium's motives. Petitioner contends that Millennium's objections are an attempt to stifle "possible" competition with Station WWVZ-FM for listeners and advertising revenues. Petitioner argues that Millennium's analysis, pursuant to *KRRC*, *infra*, "is extremely flawed and woefully short on objectivity." On the other hand, petitioner claims that its analysis of these factors illustrates that Ridgeville is not interdependent to the Charleston Urbanized Area and is deserving of a first local transmission service.

9. In its reply comments, Millennium reiterates its earlier arguments. Additionally, Millennium argues that the proposal should be denied because petitioner failed to adequately respond to the request made in the *Notice*. Specifically, Millennium contends that it was unable to determine the accuracy of the population and signal coverage data because petitioner did not provide the methodology used. Millennium also claims that the grant of the proposal would be a misapplication of the FM allotment priorities and a miscarriage of the Commission's Rule allowing a station to change its community of license without facing competing applications. Millennium submits an engineering study showing that h)§four of the seven communities petitioner cites as within the gain area, Goose Creek, Ladson, Hanahan and North Charleston, are also within the Charleston Urbanized Area. In addition, Millennium states that St. George is within Station WPAL-FM's current predicted contour, and therefore, cannot be in the gain area. Millennium asserts that the facts support denial of a first service preference to Ridgeville. Millennium further asserts that taking into consideration the three factors (*KRRC*, *infra*) the Commission examines when determining whether a community is deserving of a first local service preference, the proposal does not meet the criteria. Millennium points out that the majority of the communities petitioner cites as being within the gain area are also within the Charleston Urbanized Area. The loss area is decidedly rural while the gain area is predominantly urban. Millennium asserts that this data clearly support treating the proposed allotment to Ridgeville as an additional service to Charleston and not a first local service to Ridgeville. Millennium also rejects petitioner's contention that reallocation to Ridgeville would increase the coverage area due to "higher terrain for the antenna site as well as the ability of the station to operate nondirectionally." It alleges that a "substantial" area exists which would meet the Commission's technical requirements and would pro-

<sup>6</sup> Our engineering analysis confirms that most of the loss area is marsh and swamp with few significant communities.

<sup>7</sup> Our engineering analysis reveals that there is a slight short-

spacing to Station WLVH(FM), but this does not preclude petitioner from operating directionally from its present site at maximum facilities.

vide 70 dBu coverage to both Walterboro and Ridgeville using an omnidirectional antenna. Thus, Millennium submits that the reallocation of Ridgeville is unnecessary to allow Station WPAL-FM to use an omnidirectional antenna.

10. *Discussion.* As an initial matter, we will not address the criteria enumerated in *RKO General (KFRC)* ("*KFRC*"), 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck* ("*Tuck*"), 3 FCC Rcd 5374 (1988).<sup>8</sup> We state our reasons for not doing so. Although Ridgeville is located near the Charleston Urbanized Area,<sup>9</sup> it is not subject to the criteria enumerated in *KFRC* and *Tuck* in view of the Commission's recent decision that a station seeking to relocate to a community near an Urbanized Area is required to address these factors only if the reallocation would place a 70 dBu signal over 50% or more of the Urbanized Area. The Commission stated "that such an approach strikes a reasonable balance between ensuring that rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act and at the same time providing stations with the opportunity to change their communities of license if this would serve the public interest." See *Headland, Alabama and Chattahoochee, Florida* ("*Headland*"), MM Docket No. 91-25, 10 FCC Rcd 10352 (1995). Pursuant to *Headland*, our engineering analysis reveals that the reallocation of Channel 265C3 to Ridgeville would place a 60 dBu signal over 50% of the Charleston Urbanized Area, but would place a 70 dBu signal over only 10% of the Urbanized Area. Thus, the instant case does not present the policy concerns expressed in *Headland, supra*. We further believe that sufficient public interest benefits exist to reallocate Channel 265C3 from Walterboro to Ridgeville, South Carolina. Specifically, the reallocation would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See *Change of Community R&O and MO&O, supra*. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities as set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).<sup>10</sup>

11. In making this analysis, we note that Ridgeville, a community of 1,625, would receive a first local aural transmission service, which is priority three. On the other hand, Walterboro, a community of 5,492, already has two local aural transmission services in addition to Station WPAL-FM,<sup>11</sup> and, therefore, does not trigger priority three. Rather, it falls under priority four--other public interest matters.

<sup>8</sup> *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," i.e., the degree of 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 examines the interdependence of the suburban community with the central city. See *KFRC*, 5 FCC Rcd at 3223; *Tuck*, 3 FCC Rcd at 5377-78.

<sup>9</sup> Ridgeville is located 8 kilometers (5 miles) from the closest point of the Charleston Urbanized Area.

<sup>10</sup> The allotment priorities are: (1) first full-time aural service;

Under this priority, retention of Station WPAL-FM in Walterboro would constitute its second local full-time competitive service and a third local aural transmission service. However, it does not outweigh, in this instance, the presence of the higher allotment priority of a first local aural transmission service. See, e.g., *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3183 (1995); *Headland, supra*. In balancing the merits of these proposals, we find that the reallocation to Ridgeville should be made because it triggers the higher allotment priority of a first local transmission service. Furthermore, the removal of Station WPAL-FM from Walterboro does not deprive the community of its sole local transmission service, since Stations WONO(FM) and WALD(AM) will remain licensed to the community.

12. Moreover, we believe other reasons exist to grant this proposal. Our engineering analysis reveals that the reallocation of Channel 265C3 to Ridgeville will result in a gain area of 2,376 square kilometers (918 square miles) with a population of 120,568.<sup>12</sup> The gain area already receives five or more reception services and we consider the area to be well-served. We recognize that the gain area is offset by the fact that the removal of Station WPAL-FM from Walterboro will also create a reception service loss of 1,873 square kilometers (723 square miles) with a population of 47,230. While we consider the loss of existing service resulting from the reallocation, this concern is mitigated by the fact that the population in most of the loss area will continue to receive at least five full-time reception services, except for two small portions, one containing 1,383 persons receiving four reception services, and the other containing 830 persons receiving three reception services. More importantly, a significant portion of the loss area is sparsely populated because of marsh and swamp. The reallocation of Channel 265C3 to Ridgeville will result in a net gain area of 503 square kilometers (194.3 square miles) with a population of 73,338. No white or gray areas will be created or eliminated by the reallocation.

13. We believe the public interest would be served by reallocating Channel 265C3 from Walterboro to Ridgeville, South Carolina, since it would enable Station WPAL-FM to relocate its transmitter site to avoid a short-spacing to Station WLVH(FM), operate omnidirectionally, and provide the community with its first local aural transmission service.<sup>13</sup> An engineering analysis has determined that Channel 265C3 can be allotted to Ridgeville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7

(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)].

<sup>11</sup> Walterboro is also served by Stations WONO(FM) and WALD(AM).

<sup>12</sup> We note that the population gain and loss figures reported by petitioner for the 60 dBu service contour are 89,574 and 9,348, respectively. Our much larger gain and loss figures in the population calculation may be due to our methodology of prorating population in proportion to the territory of a county included in a gain or loss area. This methodology assumes a uniform distribution of a county's non-urban population and may not reflect the reality (i.e., marsh and swamp areas with little population).

<sup>13</sup> Millennium's allegation that a "substantial" area exists that is consistent with the Commission's technical requirements and would enable Station WPAL-FM to provide 70 dBu coverage,

miles) west at petitioner's requested site.<sup>14</sup> Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we shall also modify Station WPAL-FM's construction permit to specify operation on Channel 265C3 at Ridgeville, South Carolina, in lieu of Walterboro, South Carolina.

14. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 3307(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 25, 1996**, 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:

City	Channel No.
Ridgeville, South Carolina	265C3
Walterboro, South Carolina	229A

15. IT IS FURTHER ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Gresham Communications, Inc., for Station WPAL-FM, IS MODIFIED to specify operation on Channel 265C3 at Ridgeville, South Carolina, in lieu of Channel 265C3 at Walterboro, South Carolina, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WPAL-FM's construction permit, BLH-940829IB, 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), specifying the new facility.

(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 construction permit BLH-940829IB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

16. 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:

Gresham Communications, Inc. 1717 Wappoo Road Charleston, South Carolina 29407 (Permittee of Station WPAL-FM)	Georgetown Broadcasting Company 1666 K Street, N.W., Suite 901 Washington, D.C. 20006  (Licensee of Station WGTN-FM)
---	--

operating omnidirectionally, to both Walterboro and Ridgeville need not be addressed here as this is not a prerequisite to change a station's community of license.

<sup>14</sup> The coordinates for Channel 265C3 at Ridgeville are North Latitude 33-06-00 and West Longitude 80-20-30. We note that the coordinates for Channel 265C3 at Ridgeville are short-spaced to the licensed site of Station WGTN-FM, Channel 265A, Andrews, South Carolina. However, the license for Station WGTN-FM was modified in MM Docket No. 90-32 to specify operation on Channel 264A. See 6 FCC Rcd 4285 (1991). A

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

18. 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

record search reveals that Station WGTN-FM's construction permit (BPH-930722IB) for Channel 264A at Andrews expired on June 15, 1995, and was cancelled on September 21, 1995. Station WGTN-FM has not timely filed for reinstatement of its construction permit for Channel 264A at Andrews. Therefore, the grant of a license for Channel 265C3 at Ridgeville is no longer dependent on Station WGTN-FM relocating to Channel 264A, since it appears the station has abandoned its interest in the channel. We will serve Georgetown Broadcasting Company with a copy of this *Report and Order*.