

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-239
Table of Allotments,)	RM-10998
FM Broadcast Stations.)	
(Portage and Stoughton, Wisconsin))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 5, 2006

Released: April 7, 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 Magnum Communications, Inc., licensee of Station WBKY(FM), Portage, Wisconsin ("Petitioner"). Petitioner proposes the reallocation of Channel 240A from Portage, Wisconsin to Stoughton, Wisconsin, as the community's first local transmission service, and the modification of the license for Station WBKY(FM) to reflect the changes. Petitioner pledges to file an application for the channel and to construct the facilities if the application is granted. Opposing comments were filed by Mid-West Management, Inc. ("Mid-West").² Petitioner filed comments³ and reply comments.

Background

2. Petitioner filed this proposal 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.⁴ 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 upon the FM Allotment priorities.⁵

3. In opposition, Mid-West argues that the proposal will not serve the public interest because it will result in a large gray area of 2,400 persons receiving only one full-time aural service. It also argues that the proposal should be rejected because the petition failed to demonstrate that Stoughton, which is in the Madison Urbanized Area, is sufficiently independent of the urbanized area to warrant the

¹ *Portage and Stoughton, Wisconsin*, Notice of Proposed Rule Making, 19 FCC Rcd 10972 (MB 2004).

² Mid-West is the licensee of Stations WTUX(AM), WMNG(FM), WTDY(AM) and WLMV(FM), Madison, Wisconsin, Station WJJO(FM), Watertown, Wisconsin, Station WWQM-FM, Middleton, Wisconsin, Stations WLMV(AM), and WHIT-FM, DeForest, Wisconsin.

³ Petitioner also filed a request for waiver of the due date for comments because it did not receive a copy of the *Notice* from the Commission. Since no party will be prejudiced, we will accept Petitioner's late-filed comments and its timely filed comments in order to have a complete record.

⁴ 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*, 5 FCC Rcd 7094 (1990).

⁵ See *Revision of FM Assignment Policies and Procedures*, 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 priorities (2) and (3)].

award of a first local service priority. It further argues that the proposal will not result in a preferential arrangement of allotments because Portage is a rural community in need of third aural service, rather than an additional service to well served Madison.

4. In its comments, Petitioner reiterates its support for the proposal and pledges to apply for the new station at Stoughton if it is approved. In its reply comments, Petitioner responds to the opposition by stating first that there will be no gray area, and in fact the entire loss area will be well served, except for 82 persons who will receive two nighttime services. Petitioner states that such analyses reflect the interference-free predicted contours of stations, and, as a practical matter, since station signals are received beyond their protected signal contours, those 82 people likely receive all of the same nighttime services as the rest of the loss area. Petitioner recognizes that it was mistaken in its representation that Stoughton was not part of the Urbanized Area, acknowledges that Stoughton is part of the Madison Urbanized Area, and provides an analysis of the community using the factors outlined in *Faye and Richard Tuck, Inc.*,⁶ to show that Stoughton is independent of the Urbanized Area.

Discussion

5. First, we agree with Petitioner that the proposal would not create any gray area, and that 58 persons would receive only two fulltime services. We also credit Petitioner's analysis and determine that Stoughton is independent of the Madison Urbanized Area under the *Tuck* analysis. Stoughton meets a majority of the factors.

6. Under *Tuck*, we first look at the relative size, proximity and signal population coverage of the smaller community and the larger central city to determine whether the smaller community appears to be interdependent of the larger one. Here, Stoughton has a relatively large population, 12,534 persons,⁷ which is 3.8 percent of the population who live within the Madison Urbanized Area (329,533). In addition, Stoughton and Madison are relatively far apart (14.2 miles). Finally, the city grade signal of Station WBKY(FM) would cover only about 10 percent of the Urbanized Area.

7. We next consider the eight factors of interdependence. Stoughton was incorporated as a village in 1868 and as a city in 1882 and is listed in the U.S Census as a city. According to statistics listed by the Stoughton Chamber of Commerce, and based on the 1990 U.S. Census, 40.4 percent of Stoughton's residents work in that community and 34.4 percent work in Madison. No conflicting numbers are before us (Factor 1). There are two community newspapers, *The Stoughton Courier-Hub* and *The Great Dane*, as well as a local cable access channel, Station WSTO (Factor 2). Statements of the Mayor, City Council, City Clerk, Chief of the Fire Department, Financial Director, School Superintendent, Director of Emergency Medical Services, and Director of the Opera House all attest to the independence of the community and the perception of residents as to its independence (Factor 3). Stoughton has an elected mayor and city council as well as other elected and appointed officials (Factor

⁶ 3 FCC Rcd 5374 (1988). The Commission considers the following factors in determining a community's interdependence with a 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 community's 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 zip code or telephone book provided by the local telephone company; (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. *Tuck*, 3 FCC Rcd at 5378.

⁷ Unless otherwise noted, all population figures refer to the 2000 U.S. Census.

4). It has its own zip code, post office, and telephone book (Factor 5). Numerous businesses, including Stoughton Trailers, Uniroyal, Nestle, Alliant Energy, and MillFab, Inc. are located there. Stoughton has its own hospital, clinics, nursing homes, and many individual medical practitioners. There is no independent transportation system, but Stoughton is not served by the separate Madison system (Factor 6). Stoughton has its own media which provide outlets for local advertising (Factor 7). Stoughton provides its own government, courts, police, fire and EMT services, water, gas and electric utilities, trash and recycling, schools, libraries and recreation services (Factor 8).

8. Accordingly, having found that Stoughton is a community for allotment purposes, Petitioner's proposal will serve the public interest, meets the requirements for reallocation set forth in *Change of Community* R&O, and will result in a preferential arrangement of allotments. Channel 240A can be reallocated at Stoughton at a site 10.2 kilometers (6.3 miles) southwest of the community.⁸ The allotment of Channel 240A at Stoughton is mutually exclusive with the current use of Channel 240A at Portage. The community of Portage, population 9,728, will not be deprived of its only local service,⁹ and no white or gray area will be created. Finally, the proposal will provide a first local aural transmission service at Stoughton, under Priority Three of the allotment priorities, which will result in a preferential arrangement of allotments over the retention of a third local aural transmission service at Portage, which would serve Priority Four.

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office Pursuant to the Congressional Review Act.¹⁰

10. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective May 22, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Portage, Wisconsin	261A
Stoughton, Wisconsin	240A

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the authorization of Magnum Communications, Inc., for FM Station WBKY, Channel 240A, Portage, Wisconsin, IS MODIFIED to specify operation on Channel 240A at Stoughton, Wisconsin, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of FM Station WBKY shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

⁸ The coordinates for Channel 240A at Stoughton are 42-50-21 NL and 89-16-59 WL.

⁹ Stations WDDC(FM) and WPDR(AM) will remain in Portage.

¹⁰ See Congressional Review Act, 5 U.S.C. §801(a)(1)(A).

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, Magnum Communications, Inc., licensee of Station WBKY(FM), Portage, Wisconsin, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for FM Station WBKY to specify operation on Channel 240A at Stoughton, Wisconsin at the time its Form 301 application is submitted.

13. IT IS FURTHER ORDERED That the opposition filed by Mid-West Management, Inc., IS DISMISSED.

14. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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