

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

In the Matter of

Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 99-322
FM Broadcast Stations.	)	RM-9762
(Chillicothe and Ashville, Ohio)	)	
	)	

**REQUEST FOR SUPPLEMENTAL INFORMATION**

**Adopted: May 28, 2003**

**Released: June 2, 2003**

**Comment Date: July 17, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by jointly by Franklin Communications, Inc., North American Broadcasting Co. and WLCT Radio Incorporated (“Joint Petitioners”) directed to the *Report and Order* in this proceeding.<sup>1</sup> Secret Communications II, LLC (Secret Communications”) filed an Opposition to Petition for Reconsideration and the Joint Petitioners filed a Reply. For the reasons discussed below, we are issuing this *Request for Supplemental Information*.

Background

2. At the request of Secret Communications, former licensee of Station WFCB, Channel 227B, Chillicothe, Ohio, the *Report and Order* in this proceeding reallocated Channel 227B from Chillicothe to Ashville, Ohio, and modified the Station WFCB license to specify operation on Channel 227B at Ashville.<sup>2</sup> The *Report and Order* was 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> In this situation, the reallocation resulted in Ashville (with a population of 3,174 persons) having its first local service while Chillicothe (with a population of 21,796 persons) will continue to receive local service from six stations. Because Secret Communications did not propose a change in transmitter site, there was no loss of service to any population. The *Report and Order* did not require Secret Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Ashville is independent of the

<sup>1</sup>Chillicothe and Ashville, Ohio, 17 FCC Rcd 20418 (M. Bur. 2002).

<sup>2</sup> Clear Channel Broadcasting License, Inc. is now the licensee of Station WFCB.

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

<sup>4</sup> 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).

Columbus Urbanized Area and entitled to consideration as a first local service.<sup>5</sup> This is because Asheville is not located in the Columbus Urbanized Area and Station WFCB provides only 2.7% of the Urbanized Area with a 70 dBu signal. Similarly, the *Report and Order* did not impose a permanent condition prohibiting Station WFCB from relocating its transmitter site.

3. In regard to this reallocation proposal, we concur with the Joint Petitioners that as an Asheville station, it is now possible to relocate the Station WFCB transmitter to a site that would serve most, if not all, of the Columbus Urbanized Area. Had Secret Communications proposed this site in its petition for rule making, we would have required a showing pursuant to *Faye and Richard Tuck* to demonstrate that Asheville is independent of the Urbanized Area and therefore entitled to consideration as a first local service. This potential transmitter site relocation has been noted by the Joint Petitioners and the *Report and Order* was specifically predicated on the reallocation being a first local service for Asheville. In the event the licensee of Station WFCB subsequently proposes to relocate its transmitter site to a location that would serve more than 50% of the Columbus Urbanized Area, the procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement that the licensee submit a showing pursuant to *Faye and Richard Tuck*.<sup>6</sup> In order to avoid any such perception, we are requesting Clear Channel Broadcasting License, Inc. to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Asheville is independent of the Columbus Urbanized Area and therefore entitled to consideration as a first local service regardless of the location of its transmitter site. This would enable us to resolve this matter on the basis of a complete record and address any issue with respect to a two-step procedure to implement a migration of a station from a rural to an urbanized area.

4. Interested parties may file comments on or before July 17, 2003. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following counsel:

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5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this matter, contact Robert Hayne, Media Bureau, (202) 418-2177. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or the staff for clarification or adduction of evidence or resolution of the issues in the proceeding. However, any new written information elicited from such request or summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this

<sup>5</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (A reallocation proposal requires a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50% of an Urbanized Area).

<sup>6</sup> See *Headland, Alabama, and Chattahoochee, Florida, supra*.

service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
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Media Bureau