

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-175
Table of Allotments,)	RM-10197
FM Broadcast Stations.)	
(Old Fort, Fletcher, and Asheville,)	
North Carolina; Surgoinsville, Tennessee,)	
and Augusta, Georgia))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 18, 2003

Released: June 23, 2003

By the Assistant Chief, Audio Division:

1. At the joint request of Blue Dolphin Communications of NC, LLC,¹ licensee of Station WQNQ-FM, Old Fort, North Carolina, Clear Channel Broadcasting Licenses, Inc., licensee of WBBQ-FM, Augusta, Georgia, and Capstar TX Limited Partnership, licensee of WKSF(FM) Asheville, North Carolina (“Petitioners”), the Audio Division has before it a *Notice of Proposed Rule Making*², proposing the reallocation of Channel 282A from Old Fort to Fletcher, North Carolina, and the modification of Station WQNQ(FM)’s license accordingly.³ To accommodate the reallocation, petitioners also propose (a) the reallocation of Channel 260C from Asheville to Old Fort, North Carolina, and the modification of Station WKSF(FM)’s license accordingly; (b) the modification of the transmitter site of Station WEYE(FM), Channel 282A, Surgoinsville, Tennessee; and (c) the modification of the transmitter site of Station WBBQ-FM, Channel 282C, Augusta, Georgia. Petitioners filed comments in support of the proposal reaffirming their intention to apply for the respective channels, if allotted. No other comments were received.

2. The proposed reallocation was filed pursuant to Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording

¹ The license of Station WQNQ(FM) was assigned from Blue Dolphin Communications of NC, LLC to Clear Channel Broadcasting Licenses, Inc. on March 21, 2001, and consummated on December 4, 2001.

² *Old Fort, North Carolina, et al.*, 16 FCC Rcd 14895 (2001).

³ Clear Channel Broadcasting Licenses, Inc. and Capstar TX Limited Partnership are affiliated companies. The present corporation holds an option to purchase WQNQ-FM and therefore will implement the changes proposed herein.

other interested parties an opportunity to file competing expressions of interest.⁴ As stated in the *Notice*, Fletcher is an incorporated town located in Henderson County and has a 2000 U.S. Census population of 4,185 persons. Fletcher has a mayor/town council form of government run by an elected mayor and a four-member elected town council. It also has a number of town departments, boards, commissions and committees comprised of town residents, such as Administration Department, Parks and Recreation Commission, Planning Board and Zoning Board of Adjustment. Fletcher has its own zip code (28732), and a post office. There are over 140 businesses located within the town of Fletcher. A substantial number of these businesses identify with the community by using “Fletcher” in their name, *e.g.*, Fletcher A-1 tire, Inc., Fletcher Feeding Services, Inc., Fletcher Motor Company, Inc., Fletcher Plaza Barber Shop, Fletcher Cleaners, Fletcher Hair Design, Fletcher Lamp Post and Fletcher Insurance. There are several health care providers located in Fletcher, *e.g.*, Parkridge and Pardee Hospitals maintain professional office buildings, and veterinary services may be obtained from Dr. Martin’s Veterinary Hospital. Fletcher has two main parks—Fletcher Community Park and Kate’s Park. The town has many churches and religious organizations, such as Fletcher First Baptist Church, Fletcher First Methodist Church, Fletcher Russian Orthodox Church, Fletcher United Methodist Church, and Calvary Episcopal Church. There are some civic and service organizations in Fletcher, including Kiwanis Club of Fletcher, the Book Lovers Club, Rotary Club and Boys and Girls Scouts.

3. Since Fletcher is located within the Asheville Urbanized Area, petitioners have provided the required *Tuck* analysis addressing the Commission’s concern about the potential migration of stations from underserved rural areas to well-served urban areas⁵ In making the determination whether to award an urbanized community a first local service preference, the Commission considers the extent the station will provide service to the entire Urbanized Area, the relative populations and proximity of the suburban and central city, and most importantly, the independence of the suburban community. Guided by the criteria set forth in *Tuck* in judging the independence of a community, the reallocation of Channel 282A from Old Fort to Asheville (population 68,889) at the proposed transmitter site, will place a 70 dBu contour signal over 87% of the Asheville Urbanized Area. Fletcher, located in Henderson County, is 17 kilometers away from Asheville which is located in Buncombe County. Of the eight factors concerned in assessing independence of a community, petitioners provide evidence which satisfies factors (1), (3), (4), (5), (6), (7) and to some extent (8).⁶ In regard to factor (2), petitioners state that Fletcher no longer has its own newspaper, but it is served by

⁴ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*Change of Community*”).

⁵ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ The eight factors are: (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'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) 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 municipal services

the *Asheville Times* and the *Henderson Times-News*. In addition, a Fletcher maintains a website and also publishes a monthly newsletter which is distributed in the mail to each resident and is accessible on the webpage. Based on the evidence presented, we find that Fletcher is independent of the Asheville Urbanized Area and should be awarded a first local service preference.

4. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 “grandfathered” short-spacings and those permitted under Section 73.215 of the Commission’s Rules.⁷ Consistent with this policy, petitioners state that reallocation of Channel 282A from Old Fort to Fletcher, North Carolina, will create short-spacings to Station WEYE(FM), Channel 282A, Surgoinsville, Tennessee, and to Station WBBQ(FM), Channel 282C, Augusta, Georgia. Station WKSF(FM) at Asheville is short-spaced to two “grandfathered” Section 73.215 stations—Station WNNX(FM), Atlanta, Georgia, and Station WRFX(FM), Kannapolis, North Carolina. However, petitioners have obtained the consent of the licensees of Stations WEYE(FM) and WBBQ(FM) (licensee is a party herein) to change their transmitter sites to accommodate the reallocation, thereby eliminating the preexisting short-spacings. As a replacement service, petitioners have also requested the reallocation Channel 260C from Asheville to Old Fort and modification of Station WKSF(FM)’s license to specify Old Fort as the new community of license.

5. Moreover, the reallocation of Channel 282A to Asheville will result in a preferential arrangement of allotment because it will provide Fletcher with its first local aural transmission service under priority (3), and will also provide additional new service to 79,968 persons. Also, Old Fort will retain its sole local service since the reallocation of Channel 260C from Asheville to Old Fort is proposed herein as a replacement service. Both the gain and loss areas receive five or more reception services and are considered to be well-served. Since the reallocation of Channel 260C from Asheville to Old Fort requires no site change, a gain and loss area study is not required.

6. As stated above, the licensee of Station WEYE(FM) has furnished a statement consenting to the transmitter site relocation. Petitioners state that they will reimburse the licensee of Station WEYE(FM) for expenses incurred in connection with the relocation, and have entered into a reimbursement agreement to do so.

7. We believe the public interest would be served by reallocating Channel 282A to Fletcher, North Carolina, as the community’s first local aural transmission service. The reallocation will not result in the removal of the sole local service at Old Fort, North Carolina, since Channel 260C is proposed herein as a replacement service.⁸ An engineering analysis has determined that Channel 282A can be reallocated to Fletcher

such as police, fire protection, schools, libraries. *Tuck*, 3 FCC Rcd at 5378.

⁷ See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*; and *Berlin and North Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) ((pre-1964 “grandfathered” short-spacing); *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 “grandfathered” short-spacing); and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

⁸ The reallocation of Channel 260C from Asheville to Old Fort, North Carolina, will not result in the removal of the sole local service since four AM and two NCE-FM services would remain licensed to the community.

in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (8.0 miles) north at petitioners' requested site.⁹ To accommodate the reallocation, the reference coordinates for Channel 282A at Surgoinsville can be modified at petitioners' requested site; and the reference coordinates for Channel 282C at Augusta can be modified at petitioners' requested site.¹⁰ Additionally, Channel 260C can be reallocated to Old Fort at Station WKSF(FM)'s presently licensed site.¹¹ In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WQNQ(FM)'s license to specify operation on Channel 282A at Fletcher, North Carolina, as its new community of license. Likewise, we modify Station WKSF(FM)'s license to specify operation on Channel 260C at Old Fort, North Carolina, as its new community of license.

8. Accordingly, pursuant to the authority found 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, August 7, 2003, 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:

<u>City</u>	<u>Channel No.</u>
Old Fort, North Carolina	260C
Fletcher, North Carolina	282A
Asheville, North Carolina	---

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Clear Channel Broadcasting Licenses, Inc., for Station WQNQ(FM), Old Fort, North Carolina, IS MODIFIED to specify operation on Channel 282A at Fletcher, North Carolina, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee 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 Section 73.1620.

⁹The reference coordinates for Channel 282A at Fletcher are 35-32-28 North Latitude and 82-32-32 West Longitude.

¹⁰ The modified reference coordinates for Channel 282A at Surgoinsville are 36-33-11 North Latitude and 82-51-23 West Longitude.

The modified reference coordinates for Channel 282C at Augusta are 33-34-24 North Latitude and 81-54-17 West Longitude.

¹¹ The reference coordinates for Channel 260C at Old Fort are 35-25-32 North Latitude and 82-45-25 West Longitude.

- (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 Section 1.1307 of the Commission's Rules.
- (d) Operating authority for Station WQNQ(FM), Channel 282A at Fletcher, North Carolina, may not be granted until operations have commenced by Station WKSF(FM) at Old Fort, North Carolina.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Capstar TX Limited Partnership, for Station WKSF(FM), Asheville, North Carolina, IS MODIFIED to specify operation on Channel 260C at Old Fort, North Carolina, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission nor 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 Section 73.1620.
- (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 Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Clear Channel Broadcasting Licenses, Inc. and Capstar TX Limited Partnership, licensees of Stations WQNQ(FM) and WKSF(FM), respectively, are required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

12. 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:

Clear Channel Broadcasting Licenses, Inc. and
Capstar TX Limited Partnership
2625 South Memorial Drive, Suite A
Tulsa, Oklahoma 74129
(Licensees of Stations WQNQ(FM), WKSF(FM)
and WBBQ-FM))

Tri-City Radio, LLC
1311 Chuck Dawley Blvd., Suite 202
Mount Pleasant, South Carolina 29464
(Licensee of Station WEYE(FM))

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

14. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau