

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-22
FM Table of Allotments,)	RM-10597
FM Broadcast Stations.)	
(Ravenswood, West Virginia and Racine, Ohio))	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: December 3, 2003

Released: December 8, 2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*¹ issued at the request of Legend Communications of West Virginia, LLC (“Petitioner”), licensee of Station WLWF(FM). Petitioner proposes to reallocate Channel 226A from Ravenswood, West Virginia, to Racine, Ohio, as the community’s first local aural transmission service, and modify the license for Station WLWF(FM)’s license to reflect the change of community. Petitioner filed comments after the comment deadline with a motion to accept, reiterating its intention to file an application for construction permit at to effectuate the change of community if the channel is reallocated. No other comments were filed. We hereby accept Petitioner’s comments.

2. Petitioner filed its 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.² 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 decision is based on the FM Allotment priorities.³

3. The evidence presented is sufficient to establish that Racine is a community for allotment purposes. Racine is an incorporated community with a 2000 U.S. Census population of 746 persons. Racine has an elected mayor and village council. The village provides water, sewer and street services and has its own emergency medical system. It has police and volunteer fire departments. There are numerous businesses, churches, medical facilities and residential areas in Racine and it also has local elementary and high schools as well as a library.

¹ *Ravenswood, West Virginia and Racine Ohio*, 18 FCC Rcd 795 (2003).

² *See Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ 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 given to priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88 (1982).

4. The reallocation of Channel 226A from Ravenswood to Racine will serve the public interest. Our analysis shows that this proposal would fulfill priority three of the FM Allotment priorities because Racine will receive its first local aural transmission service and Ravenswood will continue to receive local transmission service from Station WMOV(AM). Channel 226A can be reallocated from Ravenswood, West Virginia to Racine, Ohio at Station WLWF(FM)'s existing transmitter site 14.4 kilometers (9 miles) southeast of the community.⁴ No urbanized areas are involved.

5. Racine is located within 320 kilometers (200 miles) of the U.S.-Canadian border and Canadian concurrence in the allotment has been requested but has not yet been received. However, we will reallocate Channel 226A to Racine at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if specifically objected to by Industry Canada."

6. IT IS ORDERED That effective January 23, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Ravenswood, West Virginia	---
Racine, Ohio	226A

7. Additionally, IT IS ORDERED That the Secretary of the Commission shall send a copy of such comments to the Petitioners' counsel, RETURN RECEIPT REQUESTED as follows:

Christina T. Brumley, Esq.
 Jackson & Kelly PLLC
 P.O. Box 553
 Charleston, West Virginia 25322

8. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Legend Communications of West Virginia, LLC, for Station, WLWF(FM), Channel 226A, Ravenswood, West Virginia, IS MODIFIED to specify operation on Channel 226A at Racine, Ohio, 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; and

⁴ The coordinates for Channel 226A at Racine are 38-53-36 NL and 81-46-52 WL.

- 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, unless the proposed facilities are categorically excluded from environmental processing.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in 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, Legend Communications of West Virginia, LLC, is required to submit rule making fees in addition to the fees required for the applications to effect their respective changes of community.

10. IT IS FURTHER ORDERED That this proceeding IS TERMINATED

11. For additional information concerning this proceeding,, contact Victoria M. McCauley, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau