

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

MM Docket No. 91-25

In the Matter of

Amendment of Section 73.202(b), RM-7219  
Table of Allotments,  
FM Broadcast Stations.  
(Headland, Alabama and  
Chattahoochee, Florida)

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: September 8, 1995; Released: September 19, 1995

By the Chief, Allocations Branch

1 The Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 940 (1991), issued in response to a petition filed by Chattahoochee Broadcast Associates ("CBA"), licensee of Station WBCD(FM),<sup>1</sup> Channel 287A, Chattahoochee, Florida, proposing the substitution of Channel 287C3 for Channel 287A at Chattahoochee, Florida, and the reallocation of Channel 287C3 from Chattahoochee, Florida, to Headland, Alabama. CBA also requests the modification of its license for Station WBCD(FM) to specify Headland, Alabama, as its community of license. CBA filed supporting comments restating its intention to apply for Channel 287C3 if allotted to Headland. Ozark Broadcasting Corporation, ("OBC"), licensee of Station WOAB(FM), Channel 285A, Ozark, Alabama, filed opposing comments and a pleading styled as a counterproposal and a petition for reconsideration.<sup>2</sup> Woods Communications Group, Inc. ("Woods"), licensee of Station WTVY(FM), Dothan, Alabama, and WOOF, Inc. ("WOOI"), licensee of Stations WOOF(AM) and

WOOF(FM), Dothan, Alabama, filed opposing comments. OBC filed comments supporting WOOF and Woods' comments. CBA filed reply comments.<sup>3</sup>

2. OBC in its opposing comments claims that it would lose part of its audience in the southern part of Dale County, Alabama, if Station WBCD(FM) is allowed to operate on Channel 287C3 at Headland. OBC argues that the automatic tuning circuits in many FM radios which seek the strongest available signal will "lock" on Station WBCD's signal in southern Dale County, rather than the signal of Station WOAB(FM), which is two channels removed. In addition, OBC argues that the reallocation of Channel 287C3 to Headland would locate the station's transmitter site within the Dothan, Alabama, metropolitan area, and would therefore provide an additional service to Dothan instead of a first aural transmission service to Headland.

3 Woods in opposing comments argues that the transmitter site which CBA proposes for Channel 287C3 at Headland is located approximately seven miles (11.3 kilometers) south of Headland. As a result, the station would serve Dothan as well as Headland.<sup>4</sup> Woods claims that CBA chose Headland as the community of license so that it could claim a first aural transmission service preference. Woods also submits that CBA now seeks to abandon the underserved community of Chattahoochee in order to seek enhanced financial opportunity in an urban area. This, Woods claims, contravenes the Commission's goal in adopting the change in community of license rule, citing *Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)* ("Community of License"), 5 FCC Rcd 7094 (1990). Woods submits that the move from the larger community of Chattahoochee (population 4,382)<sup>5</sup> to the smaller community of Headland (population 3,266), which is in a commercial metropolitan area served by a multitude of AM and FM stations,<sup>6</sup> is not in the public interest and should be denied.

4 In its opposition, WOOF notes that CBA received a construction permit for Channel 287A at Chattahoochee in July 1989 and has failed to build its station. WOOF also notes that in *Community of License*, the Commission stated that it would be willing to look beyond a claim of first local transmission service for proposals involving some suburban communities. WOOF maintains that according to factors listed in *Huntington Broadcasting Co. v. FCC*, 192 F

<sup>1</sup> CBA was granted a license (BLH-911031KD) for Station WBCD(FM) (formerly WUMG) on October 31, 1992. On February 10, 1994, the Commission approved a change in the call sign for this station from WUMG to WBCD.

<sup>2</sup> OBC's "petition for reconsideration" involves the Commission staff's decision not to place on public notice a counterproposal filed by OBC in MM Docket No. 90-91. We dismissed OBC's counterproposal in the *Report and Order* in MM Docket No. 90-91, 7 FCC Rcd 3059 (1992). That action is now final, and OBC failed to seek reconsideration of the proceeding. Therefore, OBC's petition for reconsideration will not be considered. We note that OBC's counterproposal in this proceeding is technically defective. The counterproposal requests, *inter alia*, the substitution of Channel 298A for Channel 287A at Chattahoochee. CBA currently holds a license for Channel 287A at Chattahoochee, at coordinates 30-49-27 and 84-48-52. OBC's proposal to substitute Channel 298A for Channel 287A at Chattahoochee at coordinates 30-50-30 and 84-50-20 would provide city grade coverage to only 67% of the city, in violation of the Commission's Rules. Furthermore, CBA has not consented to the pro-

posed change in transmitter site. As a result, the remaining substitutions which are dependent on the Chattahoochee substitution cannot be considered. Therefore, OBC's counterproposal will not be considered herein, and all responsive comments thereto will not be discussed.

<sup>3</sup> CBA also filed a request for extension of time to file reply comments, which was denied. See 6 FCC Rcd 2329 (1991).

<sup>4</sup> Dothan (population 53,589, according to the 1990 U.S. Census) is approximately 12.9 kilometers (8.0 miles) from Headland.

<sup>5</sup> Population figures are from the 1990 U.S. Census, unless otherwise noted.

<sup>6</sup> Stations WTVY(FM), WOOF(FM), WOOF(AM), WAGF(AM), WESP(FM) and WWNT(AM) are authorized to operate at Dothan. In addition, a construction permit has been granted for Station WJN, Dothan. The community receives noncommercial educational transmission service from Stations WGTF(FM), WRWA(FM) and WVOB(FM).

<sup>7</sup> Since that time, CBA has constructed its station. See paragraph 10, *infra*.

2d 33 (D.C. Cir. 1951), *RKO General, Inc. (KFRC)* ("*KFRC*"), 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* ("*Tuck*"). 3 FCC Rcd 5374 (1988), Headland is not entitled to a first local transmission service preference.<sup>8</sup>

5. WOOF submits that with respect to signal population coverage, CBA's proposal would place a city grade signal over the city limits of Dothan as well as the Dothan metropolitan area. WOOF argues that the community of Headland would account for less than two and a half percent of the population within the city grade contour, while Dothan would account for nearly forty percent of the population within the city grade contour. Thus, argues WOOF, the proposal is technically identical to a proposal to serve Dothan. As for the size of the suburban community relative to the adjacent city, WOOF notes that Dothan's population is more than sixteen times that of Headland, that the city limits of Headland and Dothan are less than a mile apart at one point, and the entire area between the communities is developed. With respect to interdependence, WOOF claims that under the eight factors of interdependence listed in *KFRC*, Headland is interdependent with Dothan. It argues that Headland and Dothan are part of the same advertising market; the Dothan and Headland Chambers of Commerce are reciprocal members of each other; Headland lacks a hospital and is served by Dothan hospitals, and Headland's telephone numbers are listed in Dothan's phone book in the same section with the Dothan numbers. In summary, WOOF argues that a presumption of interdependence is "very compelling" and only an extremely strong showing of independence can rebut the presumption that Headland is a part of Dothan for allotment purposes.

6. WOOF maintains that this proposal should be examined under allotment priority four, other public interest matters, since the allotment will not provide a first or second aural service or a first local service at either Dothan or Chattahoochee. That comparison takes into account the number of aural services in the proposed service area, the number of local services, and the relative sizes of the communities. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).<sup>9</sup> WOOF claims that under such an analysis, CBA's proposal should be denied. WOOF notes that Dothan is the center of a relatively large metropolitan area that is already well served by both AM

and FM stations. In contrast, Chattahoochee has no local FM transmission service, and a part-time AM transmission service that operates twelve and a half hours per day. WOOF contends that the provision of a first competitive local FM transmission service to Chattahoochee is a vital public interest consideration, citing *Valley Broadcasters, Inc.*, 60 RR 2d 1671 (1986). WOOF states that the reallocation of Station WBCD(FM) from an underserved rural community to a well served urban area constitutes an unfair, inefficient, and inequitable distribution of service.<sup>10</sup>

7. In reply, CBA argues that there is ample justification for the fact that Station WBCD(FM) had not been built at the time its petition for rule making was filed. CBA also contends that its request is in compliance with the Commission's policy for a change in community of license, as it has demonstrated that the proposal will result in a preferential arrangement of allotments under Commission priorities. CBA argues that its proposal was not designed to move from Chattahoochee to a more lucrative market; rather, it selected Headland in order to provide a first local transmission service to that community and to obtain higher class operation. CBA argues that its intent is not to abandon Chattahoochee, but rather to achieve an upgrade, which it is unable to achieve at Chattahoochee.

8. CBA argues that *KFRC* and *Tuck* are exceptions to the Commission's presumption that every community warrants at least one local transmission service. It notes that WOOF cites no case in which the Commission found a self-governing community located outside of an Urbanized Area to be interdependent with the Urbanized Area. CBA also seeks to rebut WOOF's contention that Headland is interdependent with the Dothan Urbanized Area. CBA argues that Headland is a significant community of its own and is independent of Dothan for its needs and services. CBA claims that Headland's residents are more than adequately served by Headland's local government, its active and growing business community, and numerous cultural and social community activities. It notes that Headland has its own local government with a mayor and five council members.<sup>11</sup> CBA notes that Headland has its own police protection, fire department, planning commission and zoning regulations, as well as a post office, nine churches and three schools. Water is provided by the Water Works Board of Headland and electricity is provided by the Ala-

<sup>8</sup> In determining whether a suburban community should be denied a first local service preference, the Commission has stated that it will rely primarily on three criteria--signal population coverage, the size of the suburban community relative to the adjacent city and the interdependence of the suburban community with the central city. There are eight factors relevant to interdependence the Commission considers: (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 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 telephone book provided by the local 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 extent to which the specified community relies on the larger metropolitan area for

various municipal services such as police, fire protection, schools, and libraries. See *KFRC*, *supra*.

<sup>9</sup> The allotment priorities are: (1) first full-time aural service; (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>10</sup> In opposing comments, WOOF also argues that because of the lack of local transmission services, Chattahoochee is an "underserved area." Chattahoochee receives city grade (70) dBu reception service from Stations WSFQ(FM), Tallahassee, Florida, WJAD(FM), Bainbridge, Georgia, and WFSY(FM), Panama City, Florida. Chattahoochee receives 60 dBu reception service from Stations WTNT(FM) and WBGM(FM), Tallahassee, WDJR(FM), Enterprise, Alabama, WPAP(FM) and WPFM(FM), Panama City, WTBB(FM), Bonifay, Florida, WFHT(FM), Quincy, Florida, and WSNI(FM), Thomasville, Georgia. It also receives daytime AM reception service from Station WMGR(AM), Bainbridge.

<sup>11</sup> CBA submits statements from the Mayor of Headland and the President of the Headland Chamber of Commerce as evidence that Headland residents are interested in having an FM station allotted to their community.

bama Power Company. CBA also submits advertisements and photographs of a large number of businesses which provide various services to Headland residents. CBA further states that Headland has a number of recreational facilities, five baseball fields, a municipal swimming pool, tennis courts, parks, gymnasium and a golf course.

#### DISCUSSION

9. As an initial matter, OBC's concern that it will lose part of its audience if Channel 287C3 is allotted to Headland does not justify denial of CBA's proposal. Our rules do not entitle OBC to protection from possible loss of audience under the conditions it describes. Our engineering analysis has indicated that Channel 287C3 can be allotted to Headland in accordance with our technical requirements.<sup>12</sup>

10. Further, the fact that CBA is now proposing to move the station does not indicate that the licensee is operating contrary to the public interest. Rather, CBA's actions suggest a continuing effort to improve the facilities of Station WBCD(FM) in a timely manner. CBA filed the only application for Channel 287A at Chattahoochee on June 1, 1988, and amended the application on September 2, 1988, to specify a site closer to the community. The application was granted on July 20, 1989. During this time, the Commission amended its rules to permit Class C3 and 6 kilowatt Class A operation, and to permit changes in community of license.<sup>13</sup> CBA filed the instant petition for rule making on December 20, 1989. On April 13, 1990, while awaiting the outcome of this proceeding, CBA filed an application to specify 6 kilowatt operation. Processing of this application was dependent upon the issuance of a Determination of No Hazard from the Federal Aviation Administration, which was issued on December 3, 1990. Since CBA's initial construction permit for 3 kilowatt operation expired on January 20, 1991, CBA requested in a December 13, 1990, filing that its 6 kilowatt application be granted expeditiously so as to avoid the necessity of requesting an extension of time for the initial permit. That application was granted December 14, 1990. CBA commenced program testing on October 21, 1991. CBA filed an application for license on October 31, 1991, and that application was granted October 30, 1992. Therefore, we believe that CBA has acted diligently to pursue service improvements for its station and that delays in constructing the station were directly related to its attempts to improve Station WBCD(FM)'s service area.

11. In *Community of License*, the Commission stated that it would not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area.<sup>14</sup> Rather, the Commission indicated that it would continue to apply its existing precedents<sup>15</sup> in this area and delegated to the staff the application of these precedents to specific factual situations. As a result, the staff has applied these precedents and required stations that have sought to reallocate their channels and to modify their licenses from rural communities to suburban communities within Urbanized Areas (as recognized by the U.S. Census) to make a showing that the suburban community warrants a first local service preference.<sup>16</sup> By way of contrast, we have not required such showings in cases where a station seeks to reallocate its channel and modify its license from a rural community to another community that is located closer to but outside of an Urbanized Area because such policy concerns did not appear as compelling when the proposed community of license is still located some distance from the center city.<sup>17</sup> However, it has not been clear what procedures should be followed when a station is seeking to reallocate its channel and modify its license from a rural community to another community that is located outside but so close to an Urbanized Area that it actually would place a city-grade (70 dBu) signal over all or a majority of the Urbanized Area. We believe that such cases logically raise the same policy concerns that are present when a station seeks to move to a community within an Urbanized Area because it would be placing a city grade signal over most of the Urbanized Area as if it were licensed to the center city. Consequently, to address these policy concerns, we will henceforth require stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing we currently require of stations seeking to move into Urbanized Areas if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area. We believe 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.

12. Because the proposed reallocation of the Chattahoochee station to Headland, Alabama, and its upgrade to a Class C3 station would place a city grade signal over all of the Dothan, Alabama, urbanized area, we must, under the criteria outlined above, first decide, consistent with our existing precedents, whether the proposal constitutes a first

<sup>12</sup> To the extent that OBC's concern reflect its fears of possible competitive harm that could arise from the allotment at Headland, we note that the Commission no longer considers the economic effects of new allotments on existing stations when making allotments. See *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *aff'd*, 4 FCC Rcd 2276 (1989).

<sup>13</sup> The Class C3 rules became effective on May 18, 1989, and the 6 kilowatt Class A rules became effective on October 2, 1989. See *First Report and Order*, MM Docket 88-375, 4 FCC Rcd 2792 (1989) and *Second Report and Order*, 4 FCC Rcd 6375 (1989). The change in community rule became effective July 31, 1989. 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).

<sup>14</sup> *Community of License*, 5 FCC Rcd at 7096 (para. 13)

<sup>15</sup> See, e.g., *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>16</sup> See, e.g., *Elizabeth City, NC*, 7 FCC Rcd 6815 (1992) (request for supplemental information to show that Chesapeake, VA is deserving of a local service preference).

<sup>17</sup> See, e.g., *Van Wert, Ohio, and Monroeville, Indiana*, 7 FCC Rcd 6519, 6520 (1992) (proposal considered as a first local service when moving from a community located 54 kilometers from an Urbanized Area to a community located 27 kilometers from the same Urbanized Area).

local service at Headland.<sup>18</sup> In *KFRC* and *Tuck* the Commission clarified the type of evidence to consider in determining whether a proposal to serve a suburban community should be considered as a first local service or whether the suburban community should be credited with all of the local transmission services licensed in the urbanized area. The Commission relies primarily on three criteria to determine if a first local service is warranted. First, "signal population coverage" is examined. This refers to the degree to which the proposed station could provide service not only to the suburban community, but to the adjacent metropolis as well. Second, we examine the size of the suburban community relative to the adjacent city, its proximity to the city, and whether the suburban community is within or outside but proximate to the Urbanized Area, of the central city. Third, we determine the interdependence of the suburban community with the central city, looking at a wide range of evidence concerning work patterns, media services, opinions of suburban residents, community institutions, and community services. See 5 FCC Rcd at 3223.

13 With respect to signal population coverage, we agree with WOOF that a Class C3 facility in Headland at the site proposed by CBA will place a city grade signal over both Headland and Dothan. As for size and proximity, Dothan, has a population of 53,589, whereas Headland, has a population of 3,266. Furthermore, the city centers of Headland and Dothan are approximately 12.9 kilometers (8.0 miles) apart, and the city limits are approximately 1.6 kilometers (1.0 mile) apart at one point.

14. However, WOOF fails to demonstrate that under the third criteria, Headland is interdependent with Dothan. No evidence is presented to suggest the extent to which community residents work in Dothan rather than Headland or whether Headland has its own local media. Therefore, we will presume these two factors favor independence. CBA notes that Headland has its own local government and planning commission. While no evidence was submitted stating whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area, CBA includes letters from two community leaders attesting to the claim that Headland needs its own radio station. CBA also notes that Headland has its own police protection and fire department, a water works board and schools. We will presume these factors also favor a finding of independence. WOOF claims that Headland and Dothan are part of the same advertising market, and CBA does not rebut the claim. Therefore, we will presume this factor suggests interdependence. As for the remaining two factors, the evidence is mixed. While WOOF points out that Headland does not have its own telephone book and that Headland telephone numbers are listed in the same section as Dothan telephone numbers in the Dothan telephone book, CBA notes that Headland has its own post office. Finally, CBA presents evidence that there are a number of businesses in Headland, whereas WOOF notes that the Headland and Dothan Chambers of Commerce are reciprocal members of each other and that Headland lacks a hospital. The parties are silent as to the presence of transportation systems. Therefore, since only one of the eight factors clearly illustrates interdependence, and evidence regarding the remain-

ing seven factors is mixed or favors a finding of independence, we believe that WOOF has demonstrated only a moderate degree of interdependence between Headland and Dothan.

15. As stated in *Tuck*, the size and proximity of the specified community to the central city, and signal population coverage is pertinent, but has less significance than evidence of interdependence. We stated in the *Community of License* that if a suburban station could provide service to the metropolis, and if the suburban community is relatively small, is within the Urbanized Area, and exhibits a high degree of interdependence with the metropolis, we are generally disinclined to grant a first local service preference to the suburban community proposal. However, in applying the *Tuck* factors to this case, only a moderate degree of interdependence between Headland and Dothan has been presented, while most of the evidence presented shows independence or a mixed finding. With respect to signal population coverage, CBA proposes to move its transmitter site and will be able to place a city grade signal over both Headland and Dothan. As for size and proximity, Dothan has a population of 53,589 persons, whereas Headland, has a population of 3,266 persons. In addition, Headland is not located within the Dothan Urbanized Area. As for the third factor, we conclude that Headland is sufficiently independent from Dothan and that the instant proposal warrants consideration as a first local service.

16. We now must compare the present and proposed arrangement of allotments under our FM Priorities to determine which would result in a preferential arrangement of allotments, as required by the *Community of License MO&O*. As discussed above in considerable detail, the instant proposal to upgrade Channel 287A to Channel 287C3, to reallocate the upgraded channel from Chattahoochee to Headland, and to modify Station WBCD(FM)'s license to specify operation on the upgraded channel at Headland would constitute a first local transmission service for Headland, AL, thereby triggering priority 3. By way of contrast, retaining the allotment at Chattahoochee would not trigger priority 3 because there is already a daytime-only AM station licensed to Chattahoochee.<sup>19</sup> Instead, it would trigger priority 4, other public interest matters, which is a lower allotment priority. Under priority 4, retention of the station at Chattahoochee would constitute the first nighttime transmission service and first competitive aural transmission service. While these are important considerations, they do not outweigh, in this instance, the presence of the higher allotment priority of a first local transmission service. See, e.g., *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3183 (1995). Our conclusion is further buttressed by two factors. First, we note that Station WBCD(FM) is not able to upgrade its channel class at Chattahoochee but can do so at Headland, AL, thereby increasing the number of people in its service area from 40,182 to 230,135. Second, Chattahoochee receives at least 17 full-time aural reception services.

17 Channel 287C3 can be allotted to Headland, Alabama, in compliance with the Commission's minimum distance separation requirements with a site restriction of

<sup>18</sup> Headland, an incorporated community, is clearly a community for allotment purposes. See *Revision of FM Assignment Policies and Procedures*, supra.

<sup>19</sup> We stated in *Community of License* that a daytime AM station constitutes a local aural transmission service. See 5 FCC Rcd at 7097.

16 kilometers (9.9 miles) south<sup>20</sup> of the community in order to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama.

18. 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 **November 3, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Headland, Alabama	287C3
Chattahoochee, Florida	☞ --

19 IT IS FURTHER ORDERED, That pursuant to Section 1.420(1) of the Commission's Rules and Section 316(a) of the Communications Act of 1934, as amended, the license for Station WBCD(FM), IS MODIFIED, to specify operation on Channel 287C3 at Headland, Alabama, in lieu of Channel 287A at Chattahoochee, Florida, 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
- (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

20 IT IS FURTHER ORDERED, That this proceeding IS TERMINATED

21 For further information concerning this proceeding, contact John A. Karousos, Mass Media Bureau, (202) 418-2180

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
 Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

<sup>20</sup> The coordinates for Channel 287C3 at Headland are North Latitude 31-16-19 and West Longitude 85-17-46