

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

MM Docket No. 89-87

In the Matter of

Amendment of Section 73.606(b), RM-6637  
Table of Allotments,  
Television Broadcast Stations.  
(Bessemer and Tuscaloosa, Alabama)

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

Adopted: January 26, 1996; Released: March 8, 1996

By the Commission:

1. The Commission has before it an Application for Review filed by Channel 17 Associates, Ltd. ("Channel 17"), licensee of television Station WDBB, Channel 17, Tuscaloosa, Alabama, directed to the *Report and Order* in this proceeding, 5 FCC Rcd 669 (1990). Birmingham Television Corporation ("BTC"), licensee of television Station WBMG, Birmingham, Alabama, filed an Opposition to Application for Review. Channel 17 filed a Reply to Opposition to Application for Review. For the reasons discussed below, we are granting the Application for Review.

**Background**

2. At the request of Channel 17, the *Notice of Proposed Rule Making* in this proceeding, 4 FCC Rcd 3729 (1989), proposed the reallocation of Channel 17 from Tuscaloosa to Bessemer, and modification of the Station WDBB license to specify Bessemer as the community of license. The Channel 17 Petition for Rule Making was filed pursuant to the provisions of Section 1.420(i) of the Rules which provides for the modification of a license or construction permit of an FM or television station to specify a new community of license where the amended allotment would be mutually exclusive with a licensee's or permittee's existing allotment. In permitting such a modification pursuant to Section 1.420(i), we require that the proposal result in a preferential arrangement of allotments. See *Report and Order* in MM Docket No. 88-526, ("*Community of License*"),

4 FCC Rcd 4870 (1989); *Memorandum Opinion and Order* in MM Docket No. 88-526, ("*Reconsideration Order*"), 5 FCC Rcd 7094 (1990).

3. The *Report and Order* denied Channel 17's request. In doing so, it determined that the proposed reallocation to Bessemer would not result in a preferential arrangement of channels in the public interest. The underpinning for that determination was that Bessemer would not be entitled to a preference as a first local television service under the *Huntington* doctrine in view of its proximity to Birmingham, Alabama. In *Huntington Broadcasting v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), the Court affirmed a Commission determination not to award a comparative preference as a first local service to an applicant for a suburban community. In the *Reconsideration Order*, we stated that reallocation proposals seeking a first local service preference for a community in an Urbanized Area would be considered in accordance with the criteria set forth in *RKO General (KFRC)*, ("*RKO General*"), 5 FCC Rcd 3222 (1990); and *Faye & Richard Tuck, Inc.*, ("*Tuck*"), 3 FCC Rcd 5374 (1988). These criteria, which seek to determine the preferred allotment where suburban communities are involved, include the independence or interdependence of the proximate communities. See para. 6, *infra*. The *Report and Order* also noted that the Bessemer reallocation proposal would not have the public interest benefit of additional reception service because Channel 17 did not propose to change its technical facilities.

4. In support of its Application for Review, Channel 17 contends that its proposed reallocation to Bessemer is in accord with the television allotment priorities established in the *Sixth Report and Order* in Docket Nos. 8736 and 8975, 41 FCC 148, 167 (1952) because Bessemer is independent of Birmingham and therefore entitled to a preference as a first local television service.<sup>1</sup> Inasmuch as the Commission procedure for evaluating television reallocation proposals is based upon these criteria, Channel 17 argues that its proposal should have received favorable consideration. In this regard, Channel 17 also argues that there was no basis in this proceeding for the staff to invoke the *Huntington* doctrine in order to deny Bessemer a preference as a first local television service because of its independence from Birmingham. Finally, Channel 17 contends that there was no basis for the staff to suggest any requirement that its reallocation proposal also contain a modification of the Station WDBB technical facilities.

**Discussion**

5. After careful consideration of this matter, we are granting the Application for Review and approving reallocation of Channel 17 from Tuscaloosa to Bessemer and modifying the Station WDBB license to specify Bessemer as the community of license. In accordance with

<sup>1</sup> The television allotment priorities are as follows:

- 1) To provide at least one television service to all parts of the United States.
- 2) To provide each community with at least one television broadcast station.
- 3) To provide a choice of at least two television services to all parts of the United States.

4) To provide each community with at least two television stations.

5) Any channels which remain unassigned under the foregoing priorities will be assigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities.



*Community of License* and the television allotment priorities, we compared the existing allotment licensed to Tuscaloosa versus a proposed allotment that would be licensed to Bessemer. In making this comparison, we are well aware that, unlike Tuscaloosa, Bessemer is within the Birmingham Urbanized Area. However, for the reasons discussed below, we believe that Bessemer is entitled to a preference as a first local service, and that reallocation of Channel 17 to Bessemer would therefore be a preferential arrangement of allotments and consistent with the *Sixth Report and Order, supra*. See also *Community of License* at 4873. In reaching this conclusion, we considered the factors listed in *RKO General* and *Tuck, supra*, which are used to determine whether a community is entitled to a first local service preference and which were not considered in the staff decision.

6. In determining whether a suburban community should be denied a first local service preference, we 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. Since Channel 17 did not originally propose to relocate or modify the Station WDBB facilities, there was not, in this instance, any reason to have considered the first criteria because the Station WDBB signal into Birmingham would have remained the same regardless of the staff's action on the underlying reallocation proposal.<sup>2</sup> There was no need to consider the second criteria because of the significant population of Bessemer. Accordingly, this matter is appropriately resolved on the basis of the third criterion, the interdependence between Bessemer and Birmingham. The Commission has developed eight factors it deems relevant to this interdependence determination: (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 telephone book provided by the local phone company or zip code; (5) whether the community has its own commercial establishments, health facilities, and transportation systems; (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 *RKO General, supra*.

7. Applying these criteria, we note that Bessemer is located 15 miles from Birmingham, and has a population of 33,497 persons according to the 1990 U. S. Census. Bessemer has a mayor and seven member city council, its

own police and fire departments, its own zoning and planning commissions, its own recreational facilities and public library, its own 1,600-seat Bessemer Civic Center, and its own local newspapers. The Bessemer City School System administers five primary schools, three middle schools, and one high school. In addition, Bessemer is the home to Bessemer State Technical College with 2,500 fulltime students. Medical services are provided by the Bessemer Caraway Medical Center. Finally, in its original Petition for Rule Making, Channel 17 referred to various businesses, eight manufacturing plants and the fact that Bessemer is a distribution center for groceries, pharmaceuticals, and manufactured goods. Given these facts, there is no basis for us to conclude that Bessemer is interdependent with Birmingham or the Birmingham Urbanized Area notwithstanding the fact that the population of Birmingham is 265,968 according to the 1990 U.S. Census. The arguments advanced by BTC that residents of Bessemer read Birmingham newspapers, and take advantage of Birmingham cultural offerings and media do not support a conclusion that Bessemer is interdependent with Birmingham in the face of the numerous indications that Bessemer operates as a distinct and independent community.

8. Moreover, reallocation of Channel 17 from Tuscaloosa, with a population of 77,759 persons, to Bessemer is not an "anomalous" result and does not constitute an "artificial and unwarranted manipulation" of our allotment policies. Cf. *RKO General, supra*. Bessemer is a substantial, distinct and separate community deserving of a first local television service. Further, reallocation of Channel 17 to Bessemer would provide a significant public interest benefit as a first local television service in accordance with the *Sixth Report and Order, supra*. In this regard, Tuscaloosa will continue to have a local television station and ten radio stations, while Bessemer will now have one local television station and one local radio station.<sup>3</sup> Finally, inasmuch as the Channel 17 proposal, as originally filed, did not involve a modification of the technical facilities, we need not have considered the Station WDBB signal coverage *vis-a-vis* the Birmingham Urbanized Area. This coverage would have remained the same whether Station WDBB is licensed to Tuscaloosa or Bessemer. On the basis of these conclusions, we find that reallocation of Channel 17 to Bessemer would be a preferential arrangement of allotments as required by *Community of License*.

9. In its Opposition to Application for Review, BTC states that television is a regional service as compared to the radio service which is characterized as a localized service. For this reason, BTC argues that Station WDBB should be considered as providing the same television service to the Birmingham Urbanized Area as do existing Birmingham stations. As such, BTC concludes that there is not a basis to award Bessemer any preference as a first local service in this situation. We disagree. In *Community*

<sup>2</sup> At the time Channel 17 filed this proposal, Channel 17 operated Station WDBB at the equivalent of maximum permissible facilities (3,720 kilowatts at 2,215 feet HAAT). These facilities enabled Station WDBB to provide an 80 dBu principal-city signal to Tuscaloosa, Bessemer, and Birmingham. On October 4, 1995, Channel 17 submitted a letter informing us that the currently authorized facilities of Station WDBB do not now provide an 80 dBu signal to either Bessemer or Birmingham. On October 13, 1995, however, Channel 17 filed an application (File No. BPCT-951013KG) proposing facilities comparable to its earlier facilities. As such, this matter can be considered either

against the background of the Station WDBB facilities at the time the reallocation proposal was filed or with the facilities proposed in the application. In either context, Station WDBB provides principal-city service to Tuscaloosa, Bessemer, Birmingham and a significant portion of the Birmingham Urbanized Area regardless of our disposition of the Application for Review.

<sup>3</sup> In addition, vacant Channel 23 and noncommercial educational Channel \*39 are also allotted to Tuscaloosa. There are now three applications pending for the Channel 23 allotment at Tuscaloosa.



of License, we specifically recognized that we apply our television priorities in a somewhat broader fashion than our FM priorities because television is a regional service. See *Community of License* at 4876 n.8. see also *Cleveland Television Corporation*, 91 FCC 2d 1129 (1982), *aff'd Cleveland Television Corp. v. FCC*, 732 F.2d 645 (D.C. Cir. 1984). In implementing this policy, we are more inclined to define service, for Section 307(b) purposes, in terms of coverage and not in terms of artificial political boundaries.<sup>4</sup> See *Evening Star Broadcasting Co.*, 27 FCC 2d 316, 321 n.4 (1971), *aff'd sub nom. Stowe v. FCC*, 466 F.2d 316 (D.C. Cir. 1972). However, there was no need to do so in this instance because Channel 17 did not propose to modify the technical facilities of Station WDBB. The overall coverage of Station WDBB would have remained the same regardless of our action in this proceeding. Therefore, as discussed earlier, this case is appropriately resolved on the basis of our finding that the proposed reallocation to Bessemer would result in a preferential arrangement of allotments as a first local television service in accordance with our television allotment priorities and *Community of License*.<sup>5</sup> See also *Ardmore, Oklahoma and Sherman, Texas*, 7 FCC Rcd 4846 (1992).

10. Accordingly, pursuant to 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 April 22, 1996, the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel No.
Tuscaloosa, Alabama	23-, 33, *39-
Bessemer, Alabama	17

11. IT IS FURTHER ORDERED. That pursuant to Section 1.420(i) of the Commission's Rules and Section 316(a) of the Communications Act of 1934, as amended, the license for television Station WDBB, Channel 17, Tuscaloosa, Alabama, IS MODIFIED, to specify Bessemer, Alabama, as the community of license, in lieu of Tuscaloosa, 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 construction permit (FCC Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

12. IT IS FURTHER ORDERED, That the aforementioned Application for Review filed by Channel 17 Associates, Ltd. IS GRANTED to the extent indicated above.

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

14. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 776-1654.

#### FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

<sup>4</sup> Section 307(b) of the Communications Act of 1934 requires a "fair, efficient, and equitable distribution" of services among the states and communities.

<sup>5</sup> Contrary to the belief expressed in paragraph 14 of the *Report*

and *Order*, there is nothing in the record of this proceeding which would warrant a determination that a second local television service in Tuscaloosa should prevail over a first local television service in Bessemer.