

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 05-67
FM Broadcast Stations.)	RM-11116
(Fishers, Lawrence, Indianapolis, and Clinton,)	RM-11342
Indiana))	
)	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: February 25, 2009

Released: February 27, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by Word Power, Inc. (“Word Power”), licensee of Station WPFR-FM, Channel 230A, Clinton, Indiana, directed to the *Report and Order* in this proceeding.¹ Indy Lico, Inc. (“Indy Lico”), licensee of Station WRWM (“Station WRWM”), Channel 230A, Fishers, Indiana,² and WFMS Lico, Inc., licensee of Station WFMS, Channel 238B, Indianapolis, Indiana, (collectively, “Joint Petitioners”), filed an Opposition to Petition for Reconsideration. For the reasons discussed below, we deny the Petition for Reconsideration.

2. **Background.** At the request of the Joint Petitioners, the *Notice of Proposed Rule Making and Order to Show Cause* proposed the substitution of Channel 230B1 for Channel 230A at Fishers, Indiana, reallocation of Channel 230B1 to Lawrence, Indiana, and modification of the Station WRWM license to specify operation on Channel 230B1 at Lawrence.³ In order to maintain local service in Fishers, the *Notice* also proposed the reallocation of Channel 238B from Indianapolis to Fishers, Indiana, and the modification of the Station WFMS license to specify Fishers as the community of license. In order to accommodate Channel 230B1 at Lawrence, the *Notice* included an *Order to Show Cause* directed to Word Power, licensee of Station WPFR-FM, to show cause why its license should not be modified to specify operation on Channel 229A in lieu of Channel 230A. In response to the *Notice*, Word Power filed a Counterproposal, proposing the upgrade of its Station WPFR-FM at Clinton from Channel 230A to Channel 230B1. In order to accommodate this upgrade, Word Power proposed that the Station WRWM license be modified to specify Lawrence at a different transmitter site on Channel 230A, rather than

¹ *Fishers, Lawrence, Indianapolis, and Clinton, Indiana*, Report and Order, 22 FCC Rcd 11660 (MB 2007).

² The Fishers station formerly used the call sign WWFT. The call sign change to WRWM was effective March 3, 2008. We will refer to this station as WRWM in this *Memorandum Opinion and Order*.

³ *Fishers, Lawrence, Indianapolis, and Clinton, Indiana*, Notice of Proposed Rule Making and Order to Show Cause, 20 FCC Rcd 4303 (MB 2005) (“*Notice*”).

Channel 230B1. The *Report and Order* granted the underlying Joint Petitioners proposal and dismissed the Word Power Counterproposal.⁴

3. In its Petition for Reconsideration, Word Power states that the *Report and Order* did not consider its comments concerning its allegation that Lawrence is not sufficiently independent of Indianapolis, Indiana, to warrant consideration as a first local service under *Faye and Richard Tuck*.⁵ Word Power also asserts that the *Report and Order* erred by not specifically requiring the Joint Petitioners to reimburse Word Power for the costs of changing the Station WPFR channel from Channel 230A to 229A as required by Commission policy.⁶ Moreover, Word Power contends that the Commission did not adequately inquire into the possible premature construction of the upgraded WRWM facilities at Lawrence.⁷ In doing so, Word Power notes that the letter only referred to Indy Lico's then call sign - WWFT - and not to any unauthorized construction under the station's previous call sign - WISG. Finally, Word Power claims that the *Report and Order* was not published in the Federal Register as required by 5 U.S.C. § 553(d), and that the actions in the *Report and Order* involving a change in a Commission rule may not be implemented until at least 30 days after publication.

4. **Discussion.** We deny the Petition for Reconsideration. In regard to our action reallocating Station WRWM from Fishers to Lawrence, Indiana, we are concerned with the migration of broadcast stations from rural to urbanized areas. However, this concern is not applicable in this situation because both communities are already located within the Indianapolis Urbanized Area. In this situation, we do not require proponents to submit a *Tuck* showing to demonstrate that a proposed new community of license is independent of the Urbanized Area and, therefore, entitled to consideration as a first local service.⁸ We also reject the argument that we erred in not conditioning the *Report and Order* on the reimbursement of Word Power's expenses in changing the Station WPFR-FM channel in order to accommodate the Channel 230B1 allotment at Lawrence. It is longstanding Commission policy that the party requesting a channel change to accommodate its proposal must reimburse the party changing the channel of its station.⁹ It is not necessary for the Commission to include a *Circleville* condition in each Report and Order approving an involuntary channel substitution. We also note that the Joint Petitioners have repeatedly stated that they will reimburse Word Power for the reasonable expenses relating to the Station WPFR-FM facility modification.

5. The Word Power argument that we failed to inquire fully into the allegation that Indy Lico upgraded its Station WRWM facilities prior to a Commission authorization is unfounded. On April 19, 2007, the Media Bureau sent an inquiry letter to Indy Lico. The letter sought information regarding the construction of the Class B1 Lawrence facilities implementing the allotment modified in this proceeding. Word Power is concerned that the inquiry letter sought information regarding the construction of WWFT but did not seek this same information for the station during the period during which it operated with its former call sign, WISG. In its Opposition to Petition for Reconsideration, Indy Lico unequivocally states that its response to the staff inquiry letter was not confined to the period during which the station operated with the WWFT call sign and that there was no unauthorized construction while the station operated under its former WISG call sign. In view of this response and the absence of other information

⁴ The *R&O* also dismissed a second counterproposal, filed by the Indiana Community Radio Corporation, as defective. No petition for reconsideration of this action was filed.

⁵ *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*").

⁶ See *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159 (1967) ("*Circleville*").

⁷ See File No. BPH-20070820ABO. The modification application was granted on February 1, 2008.

⁸ See *East Los Angeles, Long Beach, and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864 (MMB 1995).

⁹ See *Circleville*, 10 FCC Rcd at 163-65.

concerning any possible unauthorized construction, further inquiry is unwarranted. Finally, we reject the argument that Indy Lico could not implement the *Report and Order* until 30 days after publication in the Federal Register. In this instance, publication in the Federal Register was not required because we did not change any rule.¹⁰ As specifically stated in the *Report and Order*, we did not amend Section 73.202 of the Rules, the FM Table of Allotments, but rather the Media Bureau's Consolidated Data Base to reflect actions taken in the *Report and Order*. This was consistent with the revised procedures for processing and granting requests for changes in community of license and channel substitutions for existing FM stations in which the Commission stated that the FM Table of Allotments will only be amended to reflect vacant allotments and not the modification of an existing allotment.¹¹

6. The Commission will not send a copy of this *Memorandum Opinion and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because by denying the Petition for Reconsideration in this case, we are not adopting any new rule which we need to report to the Congress and the Government Accountability Office.

7. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Word Power, Inc. IS DENIED.

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

9. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
Media Bureau

¹⁰ Although not required, we did publish in the Federal Register a summary of the *Report and Order* terminating the proceeding. 72 FR 53687 (Sept. 20, 2007).

¹¹ *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License*, Report and Order, 21 FCC Rcd 14212, 4222 (2006), *recons. pending*.