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OFFICE OF THE SECRETARY
IN REPLY REFER TO:
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ORIGINAL

Richard J. Hayes, Jr.
13809 Black Meadow Road
Spotsylvania, Virginia 22553

Dear Mr. Hayes:

This is in response to the petition you filed on behalf of De Forest Broadcasting Company requesting the allotment of Channel 226A to De Forest, Wisconsin, as that community's first local transmission service. To accommodate the allotment at De Forest, you request the substitution of Channel 272A for Channel 226A at Wautoma, Wisconsin, and the substitution of Channel 284A for Channel 272A at Berlin, Wisconsin. You argue that the allotment at De Forest amounts to an incompatible channel swap and that competing expressions of interest for the channel should therefore not be accepted.

Your petition is unacceptable for consideration as filed. You did not provide geographic coordinates and a technical study demonstrating that the proposal complies with the minimum distance separation requirements of Section 73.207 of the Commission's Rules. You state that an engineering exhibit is attached to your petition but it was not included with the copies received at the Commission.

Furthermore, we would not foreclose the acceptance of competing expressions of interest for a newly allotted channel on the grounds that the channel became available pursuant to an incompatible channel swap. The Commission described its incompatible channel swap policy in conjunction with Section 1.420(g) (3) of its Rules, which permits adjacent and co-channel upgrades without the acceptance of other expressions of interest in the channel, and has applied the policy only in conjunction with channel upgrades. See Report and Order (MM Docket No. 85-313), 60 R.R. 2d 114, 120 (1986). Your reference to paragraph 19 of that Report and Order in your petition provides no support for your contention that the incompatible channel swap rationale should apply in this case. Your proposal is similar to those in which the Commission proposes allotments which require substitutions elsewhere to accommodate a new service in a community. See, e.g., Atlantic, Atlantic Beach and Hatteras, North Carolina, 6 FCC Rcd 7273 (1991) and Cambridge and Salisbury, Maryland, 49 FR 46444 (November 26, 1984). Should Channel 226A be allotted to De Forest, a filing window would be opened for competing applications.

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Based on the above, we are returning the proposal. You may refile the petition provided you correct these deficiencies.

Sincerely,

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosure

bcc: Secretary's Office
Room 222 (2 copies) filed November 23, 1992)

wisconsin/DeFores