

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of) MM Docket No. 95-119
) RM-8667
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
Dafter, Michigan)

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To: Chief, Allocations Branch
Policy and Rules Division

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FEDERAL COMMUNICATIONS COMMISSION
COMMUNICATIONS SECTION

COMMENTS OF ALGOMA BROADCASTING CO.

Algoma Broadcasting Co. ("Algoma"),¹ by and through counsel, hereby submits its comments on the Notice of Proposed Rulemaking, DA 95-1573, released July 21, 1995 ("NPRM"), in the above-referenced rulemaking proceeding. In support whereof, the following is shown:

1. In the NPRM, the Commission considered the Petition For Rulemaking ("Petition") of Dafter Community Broadcasters ("DCB"). DCB seeks the allotment of a new FM station at Dafter, Michigan.² Pursuant to §307(b) of the Communications Act of 1934, as amended, the Commission is charged with allotting broadcast channels "...among the several states and communities." 47 U.S.C. §307(b). Therefore, as an initial matter, the

¹ Algoma is the licensee of WKNW(AM) and WYSS(FM), Sault Ste. Marie, Michigan. If the Commission allots a new FM station to Dafter, Michigan, and that station becomes operational, the new Dafter station will compete for revenues with Algoma's Sault Ste. Marie stations. As such, Algoma has standing to file these Comments. See, FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1970).

² DCB actually sought the allotment of Channel 233A to Dafter, however, the Commission's engineering analysis determined that Channel 233A was short-spaced to a one-step upgrade application at Mackinaw, Michigan. The Commission alternatively proposed the allotment of Channel 293A to Dafter.

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Commission must consider whether Dafter, Michigan, is a community composed of a geographically identifiable population grouping before it can find that Dafter qualifies as a "community" for allotment purposes. See, Table of FM Allotments (Cal-Nev-Ari, Nevada, et. al, DA 95-1549, at ¶12, released July 17, 1995.

2. In its Petition, DCB merely claimed that Dafter was listed by the U.S. Department of Commerce as a "census designated place" ("CDB"). DCB presented no other evidence or proof that Dafter was a community worthy of its own FM station. In the NPRM, the Commission disagreed with DCB's finding that Dafter was a census designated place, stating that, according to its research, neither Dafter nor Dafter Township had been given CDP status. Undersigned counsel has also confirmed with the Census Bureau that Dafter is not a census designated place.

3. Other than incorrectly stating that Dafter is a census designated place, DCB made no attempt whatsoever to demonstrate that Dafter, Michigan, qualifies as a community for allotment purposes. Indeed, DEC could not meet the burden of demonstrating that Dafter is a community because the totality of evidence clearly shows the opposite to be true: Dafter is not a "community" for allotment purposes. As outlined in the attached Declaration of Timothy D. Martz (Exhibit A), the place known as Dafter, Michigan, is nothing more than a "T" intersection of two roads. That intersection has a population of only about 150 residing in about 60 residences along a main road with very short side streets. It is not incorporated and has no town government.³ Id. Dafter has no police department. Id. While there is a

³ Mr. Martz states his understanding that Dafter is not incorporated because such a step would require formal incorporation, the establishment of by-laws, creation of a local government and the provision of local services such as police and fire. See Exhibit A.

volunteer fire department quartered in the Dafter area, it does not have a full time staff. Id. Dafter provides no water or sewer service to its residents who maintain individually owned wells and septic tanks. Id. While Dafter has a post office and zip code (49724) it does not have its own telephone listing or telephone exchanges. Id. Dafter is essentially a crossroads in rural Michigan and does not possess the requisite political, economic or social components commonly associated with community status. See, Table of FM Allotments (East Hemet, CA), 67 RR 2d 146 (1989). As demonstrated by the photographs that accompany Mr. Martz' Declaration, at the geographical place known as "Dafter, Michigan" there are no commercial establishments, town or government offices or municipal building, other than an unoccupied township meeting hall. There is a burned and closed grocery/convenience store. See, Exhibit A. In addition, there are no shopping centers, hotels, churches, banks or schools located in Dafter. Id. Without the presence of these important social, political, or economic indicia, the Commission simply cannot find that Dafter is a "community" worthy of an FM allotment. See, Table of FM Allotments (East Hemet, CA), supra.

4. Dafter is merely a "quiet village" and a residential area of nearby Sault Ste. Marie, Michigan. Newspapers and media for the area are provided from Sault Ste. Marie. See, Exhibit A. The closest churches, banks and other businesses are in Sault Ste. Marie. Id. High school students go to school in Sault Ste. Marie and elementary school students go to school in Bruce Township. Id. The Dafter telephone numbers are included with the Sault Ste. Marie listings and the Dafter exchanges are the same as Sault Ste. Marie. See, Exhibit

According to Mr. Martz, there are not enough people in Dafter to make these steps practical. Id.

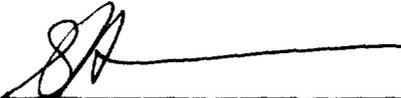
A.

5. Since DCB has failed to demonstrate that Dafter is a separate "community" for allotment purposes, its rule making proposal must be denied. The evidence shows that Dafter is a suburban neighborhood of Sault Ste. Marie. There is no evidence that Dafter has its own business, social and organizational units. See, Rockport, TX, et al., 67 RR 2d 176 (1989). In the absence of such evidence, it is impossible to elevate Dafter to community status and the Commission must find that it is a "quiet village", not worthy of such status. See, Beacon Broadcasting, 2 FCC Rcd 3469 (1987); recon. denied, 2 FCC Rcd 7562 (1987).

WHEREFORE, the above-premises considered, Algoma Broadcasting Co. respectfully requests that the Petition For Rulemaking of Dafter Community Broadcasters, be **DENIED**.

Respectfully submitted,

ALGOMA BROADCASTING CO.

By: 

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September 11, 1995
DLFDAFTER\COMMENTS.911

EXHIBIT A

DECLARATION OF TIMOTHEY D. MARTZ

DECLARATION

I, Timothy D. Martz, declare under penalty of perjury, that the foregoing is true and correct:

On August 30, 1995, I drove through the place known as Dafter, Michigan. I drove through what appeared to be a residential area at a "T" intersection of two roads. I saw no commercial establishments, town or government offices or municipal buildings, other than an unoccupied township meeting hall. There were no shopping centers, hotels, churches, banks or schools. A small local grocery/convenience store was apparently gutted by fire two years ago and remains boarded and closed. I saw a one room post office, located on the main floor of a what appeared to be a two story residence and a building that appeared to house a volunteer fire department.

I noticed approximately 60 residences along the main road (10 Mile) and a few very short side streets. There are no services in the place known as Dafter. There is no police department. There is no water nor is there a sewer system, just individually owned wells and septic tanks.

For those residents of the place known as Dafter, services originate from and are obtained in Sault Ste. Marie. The nearest bank is seven miles north in Sault Ste. Marie. Most shopping is in Sault Ste. Marie. All local media is located in and comes from Sault Ste. Marie. Most churches are in Sault Ste. Marie. High school age students attend Sault Ste. Marie High School, while younger children attend Bruce Elementary in Bruce Township. There is no Dafter telephone book. Telephone service is part of the Sault Ste. Marie system (see attached page) with the same Sault Ste. Marie exchange prefixes (632 and 635) and local not long distance pricing.

The place known as Dafter appears to be a non-existent legal entity. Dafter is not an incorporated community. It is my understanding that since this step would require formal incorporation, the establishment of by-laws, and staffing of government, police, fire and other services, there were and are simply not enough people in the place known as Dafter to make this step practical.

Attached are pictures of some of the areas that I visited in, and accurately depict, the place known as Dafter.

Executed on the 8th day of September, 1995.



Timothy D. Martz

PHOTOS OF DAFTER, MICHIGAN

1. Panoramic photo of the "T" intersection of Dafter with one room post office.



2. Photo of main road (10 Mile Road), the top of the "T". The burned and closed grocery/convenience store is on the right, post office in the middle of photo on right side of street.



ANDERSON AUTOMOTIVE

- 3915 Riverside Dr SSMar 635-1117
- Anderson B M Six Mile Rd 635-9288
- Anderson Bruce 1704 Ryan SSMar 635-9005
- Anderson Carl D 4610 Riverside Dr 632-3479
- Anderson David 824 Ashmun SSMar 632-4213
- Anderson Delbert 817 John 635-1656
- Anderson Donald J
1325 Harwood Rd S Ste Marie 632-3696
- Anderson Edward A
101 W Nineteenth St SSMar 635-1165
- Anderson Elwin D 6 Mi Rd 632-8079
- Anderson Glenn-Maria
3600 Bermuda Av SSMar 632-0130
- Anderson Henry M 2235 Riverside Dr SSMar 635-1758
- Anderson John A-Paula S 738 Eureka 632-2692
- Anderson John Lionel
3091 I-75 Bus Spur SSMar 635-5722
- Anderson M L 1004 Kimball 632-2045
- Anderson Matthew J
2210 Riverside Dr SSMar 632-0639
- Anderson Maxine 754 Kimball SSMar 632-4473
- Anderson Neil-Jan 1004 Kimball SSMar 632-2604
- Anderson Robert J 1711 Young SSMar 632-8688
- Anderson Roland 500 Sheridan Dr 635-5177
- Anderson Russell-Joyce 1020 E Fourth Av 635-1809
- Anderson S 438 Cedar 635-5134
- Anderson S L 195 Seven Mile Rd SSMar 635-0478
- Anderson Stephen 703 Bingham SSMar 632-3542
- Anderson Thomas W 3731 Radar Rd SSMar 632-8513
- Anderson William E 2103 W Third Av 632-8034
- Anderson Wilson 3558 Ten Eyck Rd Soo Twp 635-0076
- Anderson Woodrow M
Mackinaw Tr S Ste Marie 632-6934
- Andrew D L 214 E Fourteenth Av 632-4164
- Andrews A 300 Water SSMar 635-5287
- Andrews Gordon Shunk Rd S Ste Marie 632-7091
- Andrews Joseph W Sug Is 632-6096
- Andrews Michael-Laura Eleven Mile Rd SSMar 635-0775
- Andrews Tim 326 Shunk Rd SSMar 632-4386
- Andrzajewski John 814 Kimball SSMar 635-3024
- Angie's Place 703 Seymour SSMar 632-0040
- Animal Hospital Mackinaw Tr S Ste Marie 632-3141
- Anitiner D Osborn Dr SSMar 632-4276
- Annard Izia 1804 W Eighteenth St SSMar 635-5394

ANNIE'S BOOK & GIFT

- 214 Ashmun SSMar 632-0320
- ANTLER'S TWE** 804 E Portage 632-3571
- Antoine George 260 Arlington SSMar 632-6347
- Antonelli Dominic 818 Brown 632-7750
- Antonelli James 718 Pine 632-3585
- Antoniszczak Leopold 1622 Davitt SSMar 635-0831
- Anzalone Frank 719 Valley SSMar 635-9124
- Anzelmo A S 1068 Cedar 632-3726
- Apona Francisco 2512 Bayview Blvd 632-3613
- Apostolic Lutheran Missionary
1704 Ryan SSMar 635-1749
- Appel Dave 770 W Fourth Av SSMar 632-0067
- Apple Blossom Shoppe 112 Ridge 632-4150
- Arbic B K 154 Abbot Rd SSMar 632-1203
- Arbic Bernard-Colleen 118 E Sixth Av SSMar 635-1057
- Arbic Donald Baker Side Rd S Ste Marie 632-3012
- Arbic P Sug Is 632-9825
- Arbic Richard J Abbott Side Rd SSMar 632-2014

ARCADE BOWLING CENTER

- 123 E Portage Av SSMar 632-3431
- Area Interstate 711 W Spruce 632-6860

ARFSTROM PHARMACY

- 415 Ashmun 632-9661
- Arfstrom Robert RPH
3428 Lakeshore Dr SSMar 632-6607
- Aris George D 2245 W Fifth Av SSMar 635-8810
- Armitage D 632-4601
- Armstead Robert 2216 W Third Av SSMar 635-0649
- Armstrong Barry W 1300 W Fourteenth St 632-8804
- Armstrong Earl M Mackinaw Tr SSMar 632-8891
- Armstrong Eleta 1606 Meridian SSMar 632-2633
- Armstrong Gregory-Mary Seymour Rd
Cottage Sug Is 635-1229
- 635-5740
- Armstrong J 229 Mackinaw Tr SSMar 632-0515
- Armstrong James G 301 Mission SSMar 632-7402
- Armstrong Kerry 312 Dawson 632-8627
- Armstrong Leon G Mackinaw Tr SSMar 632-8012
- Armstrong Merlin 2210 Riverside Dr SSMar 632-3417

- Armstrong Nathaniel R Corktown Rd 632-9042
- Armstrong R J SSMar 632-0716
- Armstrong Robert A 6395 Nicolet 632-1651
- Armstrong Robert B 14 Mi Rd 635-0733
- Armstrong Thomas J Debra 632-4310
- Armstrong Theresa 1600 Swinton SSMar 632-4522
- Armstrong Tom-Mary 124 W Tenth Av 632-0139
- Armstrong Thomas Yerville Rd Debra 635-8724

ARMSTRONG'S POWER EQUIPMENT

- 915 Ashmun 632-9431
- Arnold Debra H 1510 Swinton SSMar 632-0268
- Arnold Lawrence 1019 Young SSMar 632-2023
- Arnott Donald T 1017 Kimball 632-3456
- Arnott G A Nicolet Rd SSMar 632-6731
- Arnott John Twelve Mile Rd 635-1817
- Arnott L W Riverside Dr SSMar 632-3915
- Arny F V 330 Maple 632-3283
- Arsenault William D 1309 Davitt 632-6796
- Artley Gary P 1200 E Eleventh Av SSMar 635-5464
- Artman Dan 300 Water SSMar 632-8154
- Askwith Annemarie 2210 Riverside Dr SSMar 632-0047

ASKWITH ELIZABETH L atty

- 125 Arlington SSMar 632-6885
- Res 3108 Lakeshore Dr 635-5913
- Askwith Elmer 1300 Ryan 632-3286
- Askwith Gifts 339 W Portage Av SSMar 632-6831
- Askwith John J-Susan 504 W Fourth Av 632-7422
- Askwith Richard 803 Augusta St SSMar 632-6923

ASKWITH RICHARD T atty

- 204 E Spruce SSMar 632-0192
- Askwith Roy 2963 Riverside Dr SSMar 632-3139
- Askwith T 308 Kimball SSMar 632-1360
- Askwith T R 117 E Thirteenth Av SSMar 632-9880
- Askwith Tyler SSMar 635-9638
- Assembly Victory Of God
See Victory Assembly Of God

- Associated Accounting 1645 South 632-3703
- Atherton Russell D Rev
505 W Fourth Av SSMar 632-9341
- Atkins Bob 1832 Chestnut 632-8870
- Atkins Carl W Barbeau 632-2036
- Atkins Cecil Scenic Dr S Ste Marie 632-2925
- Atkins Donald Fifteen Mile Rd S Ste Marie 632-8041
- Atkins Eugene 1830 Chestnut 632-8318
- Atkins Gary 1002 Minneapolis SSMar 632-3099
- Atkins Glen M Fifteen Mile Rd S Ste Marie 632-3957
- Atkins Howard 3672 Radar Rd SSMar 632-2613
- Atkins James R 209 E Twentieth Av SSMar 635-0150
- Atkins Lee-Eleanor C 1017 Tweed 632-2313
- Atkins Leslie 6335 Riverside Dr 632-3000
- Atkins Marlin 6330 Nicolet Rd SSMar 632-7046
- Atkins William E 405 Maple SSMar 635-0333
- Teen Phone 405 Maple SSMar 635-0272
- Atkinson Bert G 703 Cedar 632-3622
- Atkinson Douglas 611 E Spruce SSMar 635-9243
- Atkinson Frank 917 Kimball 632-9853
- Atkinson Harry 515 Oaka 632-7132
- Atkinson Harry-Ethel 408 Barbeau 635-1669
- Atkinson Harvey 338 Carrie SSMar 635-1517
- Atkinson Joseph 1612 W Fifth Av SSMar 632-8214
- Atkinson M J 1601 Seymour St SSMar 632-2828
- Atkinson Rita Charlotte Beach 632-6916
- Atkinson Robert J US 2 632-6918
- Atkinson Roy 3278 Radar Rd SSMar 632-3223
- ATKINSON SIGNS** 515 Oaka 632-7132
- Atkinson Stanley M Big Pine Rd Sault Ste Marie 632-3055
- Atkinson William H 1108 Superior 632-9416
- Attie Ray-Paulette Birch Point Rd Brimley 635-3073
- Aube Edwin 2305 W Twentieth St SSMar 635-1633
- Aube Harry J III 2137 W Fourth Av SSMar 635-5848
- Aube L A SSMar 632-7993
- Aube Lee 1804 W Eighteenth St SSMar 632-0750
- Aube M V 632-7777
- Aube's Main Street Party Store
824 Ashmun SSMar 635-3053

AUDIO VIDEO SPECIALISTS

- 826 Ashmun SSMar 632-7727
- Augustson William 305 Hursley 632-2586

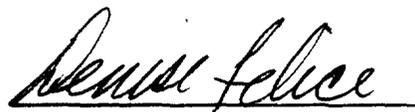
CERTIFICATE OF SERVICE

I, Denise Felice, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 11th day of September, 1995, copies of the foregoing were sent by first class mail, postage prepaid, to the following:

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