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

REPLY TO COMMENTS OF DAFTER COMMUNITY BROADCASTERS

Algoma Broadcasting Co. ("Algoma"),[1] by and through counsel, hereby submits its Reply to the "Comments of Dafter Community Broadcasters" filed in the above-referenced rulemaking proceeding.[2] In support whereof, the following is shown:

1. In its NPRM, the Commission considered the Petition For Rulemaking ("Petition") of Dafter Community Broadcasters ("DCB"). DCB seeks the allotment of a new FM channel to Dafter, Michigan.[3] In its Petition, DCB failed to provide sufficient

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[1] Algoma is the licensee of WKNW(AM) and WYSS(FM), Sault St. 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 St. Marie stations. As such, Algoma has standing to file this Reply. See, FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1970). Further, Algoma has already participated in this proceeding.

[2] The Notice of Proposed Rulemaking, DA 95-1573, released July 21, 1995, ("NPRM") set September 26, 1995, as the deadline for filing replies in this proceeding. Therefore, this reply is timely filed.

[3] 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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evidence that the place known as "Dafter, Michigan" constitutes a "community" for allotment purposes. DCB incorrectly claimed that Dafter was a Census Designated Place and provided no other evidence that Dafter possesses the requisite political, economic or social components commonly associated with community status. See, Table of FM Allotments, Gretna, FL, et. al, 6 FCC Rcd 633 (1991); see also, East Hemet, CA, 67 RR 2d 146 (1989). The Commission recognized this flaw and requested that DCB submit evidence to demonstrate that Dafter was a community.

2. In its Comments filed on September 11, 1995, Algoma demonstrated that the place known as "Dafter, Michigan" is not a community for allotment purposes, and is a mere "T" intersection of two roads. Algoma argued that Dafter is a "quiet village" and could not qualify as a "community" since it has no town government, municipal services, or commercial establishments. Algoma concluded that Dafter is essentially a crossroads in the middle of rural Michigan and does not possess any of the indicia that are critical for a finding that it is a "community."

3. In its Comments, DCB attempts to show that "Dafter, Michigan" is a community. However, DCB has utterly failed to carry its burden. See, FM Table of Allotments (Garden City, IN), 6 FCC Rcd 3747 (1991). Throughout its Petition, DCB refers to the area as "Dafter, Michigan." However, in its Comments, DCB changes horses, and refers to the area as "Dafter Township." For example, DCB argues that "Dafter, Michigan, is a township located in Chippewa County, in the "upper peninsula" area of Michigan." DCB Comments at p. 2. DCB claims that Dafter is a Census Designated Place and is "listed in the 1980 U.S. Department of Commerce, Bureau of

Census, Census of Population bulletin as an incorporated township with a population of 1,037 persons." Id. However, the U.S. Bureau of Census listing included as Attachment A to DCB's Comments lists "Dafter Township" and not "Dafter." Similarly, DCB cites to other evidence to show that "Dafter, Michigan" is a community, such as the fact that Dafter has its own government, businesses, post office, etc. However, the additional information cited by DCB relates to "Dafter Township" and not to "Dafter." Therefore, from the evidence, it appears that DCB is actually seeking a new FM allotment for Dafter Township, Michigan.

4. This is an important distinction. The Commission has clearly stated that it "allots channels to communities, and not to townships." Table of FM Allotments (Brownstown, KY, et. al), 7 FCC Rcd 3173, 3174, n. 7 (1992). This is because a township is more like a county comprised of a large, geographically extensive area than a community that is comprised of a geographically identifiable population grouping. See, Table of FM Allotments (Cal-Nev-Ari, NV), DA 95-1549, released July 17, 1995.[4] In fact, in the NPRM in this proceeding, the Commission once again stated that allotments are made to communities and not townships. See, NPRM at ¶3. Since DCB is seeking the allotment of a new FM station to Dafter Township, Michigan, its proposal must be denied as contrary to Commission policy.

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[4] While Dafter Township may be a "Census Designated Place," this fact is not relevant on the question of whether a township qualifies as a "community." Since a township is like a "county," and since counties are geographically too extensive to qualify as licensed communities, DCB's proposal to allot a new FM station to a "township" must be denied regardless of its Census designations. See, FM Table of Allotments (Aguada, PR), 51 RR 2d 1329, 1336 (1982).

5. Even if the Commission were to consider DCB's showing, it is insufficient to support the conclusion that "Dafter, Michigan" is a community for allotment purposes. While DCB has cited to the existence of various governmental authorities and businesses that it claims are located in the area, it has failed to show whether any entities are located in the area known as "Dafter"[5] sufficient to confer "community" status upon the area. DCB's showing must be disregarded since it has not shown that these organizations have a nexus with "Dafter, Michigan" the "community" to which it seeks an allotment. See, FM Table of Allotments (Pike Road and Ramer, AL), DA 95-1932, released September 19, 1995; FM Table of Allotments (Ellison Bay, WI), DA 95-1595, released July 25, 1995; FM Table of Allotments (Islesboro, ME), 8 FCC Rcd 4869 (1993); and FM Table of Allotments (Gretna, FL), supra. Therefore, since DCB is requesting the FM allotment to a township rather than a community, and since the place known as "Dafter, Michigan" would not itself qualify for a new FM allotment, DCB's proposal must be denied.

WHEREFORE, the above-premises considered, Algoma Broadcasting Co. respectfully requests that the Petition For Rulemaking of Dafter Community Broadcasters, be **DENIED**, and that no FM channel be allotted.

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[5] DCB curiously cites to the Commission's Notice of Proposed Rulemaking in MM Docket No. 90-311 to support its conclusion that Dafter is a "place of social, economic and cultural diversity qualifying it as a community for allotment purposes." DCB's Comments at p. 3 citing FM Table of Allotments (Oak Grove, FL), 5 FCC Rcd 3774 (1990). However, in that case, the Commission questioned whether an unincorporated place not listed in the U.S. Census would qualify as a "community." The issue was never resolved as the petitioner later withdrew its petition for rulemaking. See, Table of FM Allotment, 8 FCC Rcd 5946 (1990). The Commission's concerns voiced in its NPRM, supports Algoma's position that the place know as "Dafter" is not a community.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Denise Felice, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 26th day of September, 1995, copies of the foregoing were sent by first class mail, postage prepaid, to the following:

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