

FCC MAIL SECTION

Federal Communications Commission

DA 98-529

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-260
Table of Allotments,)	RM-8965
FM Broadcast Stations.)	RM-9034
(Lake Crystal, Madelia, Mankato,)	RM-9035
and Vernon Center, Minnesota) ¹)	RM-9036
)	RM-9037

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 11, 1998

Released: March 20, 1998

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 11 FCC Rcd 22547 (1996), proposing the allotment of Channel 231A at Mankato, Minnesota, as that community's third FM broadcast service. The Notice was issued in response to a petition filed by Mid-Minnesota Broadcasting Company ("Mid-Minnesota").² James J. Wychor ("Wychor") filed comments supporting the allotment of Channel 231A at Mankato. Comments and counterproposals were filed by Vernon Center Broadcasters ("VCB"), James D. Ingstad ("Ingstad"), Atlantis Broadcasting Co., L.L.C. ("Atlantis") and Jo Guck Bailey ("Bailey").³ Atlantis, Bailey, Ingstad and Wychor filed reply comments.

2. VCB counterproposed the allotment of Channel 231A at Vernon Center, Minnesota, as that community's first local service (RM-9035). According to VCB, Vernon Center is an incorporated community, governed by an elected mayor and city council and is located on U.S. Highway 169 in Blue Earth County. VCB states that Vernon Center is credited with a population of 339 people by the 1990 Census, has its own post office and zip code and is not located in an urbanized area. Further, Vernon Center has a school, one bank, three churches and the usual complement of businesses and organizations generally found in communities of this size. VCB contends that the allotment of Channel 231A at Vernon Center will provide a

¹ The communities of Lake Crystal, Madelia and Vernon Center have been added to the caption.

² The Notice pointed out that the petition was signed and verified by Mid-Minnesota's technical consultant in violation of Section 1.52 of the Commission's Rules. Mid-Minnesota was requested to rectify this omission in its comments. Mid-Minnesota failed to respond to the Notice of Proposed Rule Making.

³ The counterproposals were put on public notice on March 12, 1997 (Report No. 2180).

more efficient distribution of broadcast service as the allotment will provide a first local service to the community rather than a sixth local transmission service to Mankato as is requested by Mid-Minnesota.⁴

3. The counterproposal filed by Ingstad, licensee of Stations KYSM(AM/FM), Mankato, Minnesota, requests the allotment of Channel 231A at Madelia, Minnesota, in lieu of Mankato (RM-9034). Ingstad argues that the Commission's allocation priorities favor the provision of a first local FM service at Madelia over the allotment of Channel 231A at Mankato as a third FM service. Ingstad contends that Mankato is well served while Madelia has no local broadcast stations and that the allotment will provide a first local service to a community of 2,237 people. Ingstad states that the allotment will provide city grade coverage to the community of Madelia in compliance with Commission's Rules. Ingstad further states that he will file an application for Channel 231A at Madelia.

4. Atlantis proposes the allotment of Channel 231A at Lake Crystal, Minnesota, as a first local service, in its counterproposal (RM-9036). Atlantis provided information demonstrating that Lake Crystal is a community for allotment purposes. According to Atlantis, Lake Crystal has a population of 2,084 people, is located in Blue Earth County and has its own post office and zip code. Further, Lake Crystal has its own schools, library, bank, newspaper (Lake Crystal Tribune), police and fire department along with over 100 businesses and professional services, seven churches and other community organizations. Atlantis argues that although Mankato has a significantly larger population than Lake Crystal, it is served by five local stations, while Lake Crystal residents do not enjoy a local service. Atlantis requests that the Commission grant its counterproposal and states that it will file an application for Channel 231A at Lake Crystal.

5. Bailey, like Atlantis, counterproposed the allotment of Channel 231A at Lake Crystal in lieu of Mankato. Bailey stated her intention to file an application for Channel 231A at Lake Crystal if the allotment is made. Bailey believes that Lake Crystal is deserving of its own radio station because of its size and individual identity. According to Bailey, Lake Crystal has a council-city clerk form of government with an elected mayor. Lake Crystal has a police and fire department, ambulance and emergency rescue service, Lake Crystal Health Care Center, numerous service organizations including the Lions, American Legion, a Masonic Lodge, chamber of commerce, Boy and Girl Scout troops and the 4-H Club. Bailey states that the community has a myriad of service providers and vendors ranging from hardware stores and insurance agents to accountants and farm related businesses. Bailey contends that Lake Crystal has a need for a daily resource for information on current civic, cultural and school issues and events which could be provided by a local radio station.

6. Atlantis and Bailey filed reply comments supporting the allotment of Channel 231A at Lake Crystal. Ingstad withdrew his request for an allotment at Madelia, Minnesota, after the

⁴ Stations KEEZ(FM), KYSM-FM, KMSU(FM-ed), KTOE(AM) and KYSM(AM) are all licensed to Mankato.

counterproposals were put on public notice in compliance with Section 1.420(j) of the Commission's Rules.⁵ Ingstad does not believe that the area can support new FM channels at both Madelia and Lake Crystal as the communities are only ten miles apart. Ingstad stated his intention to apply for Channel 231A if it is allotted to Lake Crystal. Wychor filed reply comments withdrawing his interest in an allotment at Mankato, Minnesota. Wychor states that he will support the allotment of Channel 231A at Lake Crystal. Wychor believes that an allotment at Lake Crystal, providing a first local service, benefits the public interest more than a third FM service at Mankato.⁶

7. A review of the proposals indicates that Mid-Minnesota did not file comments in response to the Notice supporting an allotment at Mankato. Wychor, who originally supported an allotment at Mankato, has withdrawn his support of an additional channel in the community. Ingstad has withdrawn his proposal for an allotment at Madelia, Minnesota, and instead supports an allotment at Lake Crystal.⁷ We point out that a basic requirement of a rule making proceeding for an FM allotment proposal is a statement of interest in the channel requested. We will not allot a channel in the absence of an assurance that a party will file an application for the allotment. Therefore, since there appears to be no interest in filing an application for a channel at Mankato or Madelia, Minnesota, no further consideration will be given to allotments at the communities of Mankato or Madelia, Minnesota. We shall turn our attention to the counterproposals requesting allotments at Vernon Center, Minnesota, and Lake Crystal, Minnesota.

8. Our study of the remaining proposals indicates that Vernon Center and Lake Crystal are both deserving of an FM channel. In an effort to provide each community with its first local service, the staff performed a search to determine if alternate channels were available for allotment at either community. Although we were unable to locate an additional channel for Vernon City, we have found an additional channel for Lake Crystal which will allow us to make an allotment at both communities. The study indicates that Channel 239A can be allotted to Lake Crystal, Minnesota, in compliance with the Commission's spacing requirements, provided there is a site restriction 14.1 kilometers (8.6 miles) west of the community.⁸ The site restriction will prevent a conflict with Station KCHK, Channel 238A, New Prague, Minnesota, and with Station KILR, Channel 240C3, Estherville, Iowa. In

⁵ Ingstad has stated that he has not been promised nor paid any consideration for withdrawal of his counterproposal for Madelia.

⁶ Wychor stated that he had not been promised nor paid any consideration for withdrawing his support for the allotment of an FM channel at Mankato, Minnesota, in compliance with Section 1.420(j) of the Commission's Rules..

⁷ A staff analysis determined that Channels 222A or 274A could be allotted to Madelia, Minnesota, to accommodate Ingstad's counterproposal.

⁸ The coordinates for Channel 239A at Lake Crystal are 44-09-27 and 94-22-32.

response to the proposal filed by Vernon Center Broadcasters, we will allot Channel 231A to Vernon Center, Minnesota, with a site restriction 9.2 kilometers (5.7 miles) northwest of the community.⁹ The site restriction will prevent a conflict with Station KIAI, Channel 230C1, Mason City, Iowa.

9. In reply comments, Atlantis filed comments objecting to the allotment of Channel 239A at Lake Crystal. Ingstad and Bailey, who both expressed an intent to file an application for Channel 231A at Lake Crystal, have not objected to the use of an alternate channel. According to Atlantis, the use of Channel 239A at Lake Crystal is not feasible because of the required site restriction which allows for a very small area of 0.236 square kilometers for location of the transmitter. Atlantis further argues that Channel 239A will require the use of a directional antenna which is not a consideration permitted in rule making proceedings. In contrast, Atlantis points out that Channel 231A can be allotted to Lake Crystal without a site restriction and that it will serve a population of 71,302 while Channel 239A would serve a population of only 40,368 people at Lake Crystal. While we do agree with Atlantis that the transmitter site for Channel 239A is confined to a small area of 0.3175 square kilometers (i.e., 78.47 acres), we believe it is sufficient for purposes of locating a 100 meter tower for a class A FM station. Our engineering analysis indicates that, from this area, city grade coverage can be provided to 100% of Lake Crystal without a directional antenna. Furthermore, Atlantis has not provided a detailed analysis demonstrating that Channel 239A is an unusable channel--that is, there are no suitable or available sites for implementing this allotment in the fully spaced area. Therefore, we believe that there is a theoretical site available for Channel 239A at Lake Crystal which is appropriate for allotment purposes. See Randolph and Brandon, Vermont, 6 FCC Rcd 1760 (1991).

10. Accordingly, pursuant to the authority contained 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 May 4, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Lake Crystal, Minnesota	239A
Vernon Center, Minnesota	231A

11. IT IS FURTHER ORDERED, That the Secretary of the Commission, shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

⁹ The coordinates for Channel 231A at Vernon Center are 44-01-15 and 94-15-00.

Abdolmjid Khalilzadeh
Philip A. Rubin & Associates, Inc.
1350 Connecticut Avenue, N.W., Suite 610
Washington, D. C. 20036

12. A filing window for channel 239A at Lake Crystal, Minnesota, and Channel 231A at Vernon Center, Minnesota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

13. IT IS FURTHER ORDERED, That the counterproposal filed by James D. Ingstad (RM-9034) IS DISMISSED.

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

15. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 239A at Lake Crystal, Minnesota, and Channel 231A at Vernon Center, Minnesota, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau