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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: Detroit Lakes and Barnesville, Minnesota
MM Docket No. 00-53/RM-9823

Dear Ms. Salas:

Transmitted herewith on behalf of Triad Broadcasting Co., L.L.C., are an original and four copies of its Reply Comments filed in connection with the *Notice of Proposed Rule Making*, DA 00-645 (released March 24, 2000), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Triad Broadcasting Co., L.L.C.

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-53
Table of Allotments,)	RM-9823
FM Broadcast Stations,)	
(Detroit Lakes and Barnesville, Minnesota))	

To: Chief, Allocations Branch

**REPLY COMMENTS OF
TRIAD BROADCASTING CO., L.L.C.**

TRIAD BROADCASTING CO., L.L.C.

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SUMMARY

As demonstrated in Triad's Comments, filed May 15, 2000, the community of Barnesville, Minnesota, is interdependent with the substantially larger Fargo-Moorhead Urbanized Area. As a result, Barnesville is not entitled to a first local service preference under the FCC's FM allotment criteria. The proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville would not result in a preferential arrangement of allotments because it would result in a net loss of service to at least 32,835 persons, many of whom would reside in underserved areas, including seven who would reside in a gray area. Therefore, the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville should be denied.

On the other hand, the counterproposal filed by Enderlin Broadcasting Company ("EBC") requesting the allotment of Channel 233C1 at Enderlin, North Dakota, should be granted because it would provide substantial public interest benefits. In addition to providing the community of Enderlin with its first local transmission service, EBC's proposal would provide a new reception service to 182,766 people, including 12,386 persons in underserved areas. The allotment of Channel 233C1 to Enderlin also would provide a second full-time reception service to 24 people within a 33.9 square kilometer area, and thereby eliminate an existing gray area.

Even assuming, *arguendo*, that the FCC were to conclude that the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville would result in a preferential arrangement of allotments, the Commission should adopt both allotment proposals by using Station KRVI's licensed transmitter site as the allotment reference point for the Channel 236C1 reallocation at Barnesville. Resolving the conflicting allotment proposals in this manner would enable the FCC to provide a new service at Barnesville, and, at the same time, avoid the significant loss of service to underserved

areas (and resulting gray area) that would result from adopting the petitioner's proposal at its preferred transmitter site. Furthermore, using KRVI's licensed transmitter site as the allotment reference point for the Barnesville allotment also would enable the FCC to avoid any question concerning the timeliness of EBC's expression of interest in its own proposal to allot Channel 233C1 at Enderlin.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-53
Table of Allotments,) RM-9823
FM Broadcast Stations,)
(Detroit Lakes and Barnesville, Minnesota))

To: Chief, Allocations Branch

**REPLY COMMENTS OF
TRIAD BROADCASTING CO., L.L.C.**

Triad Broadcasting Co., L.L.C. ("Triad"), by counsel, and pursuant to Section 1.415 of the Commission's rules, hereby submits its reply comments in response to the comments filed in the above-captioned proceeding by T&J Broadcasting, Inc. ("T&J") and Enderlin Broadcasting Company ("EBC") in connection with the *Notice of Proposed Rule Making*, DA 00-645 (released March 24, 2000) ("*NPRM*"), proposing the reallocation of Channel 236C1 from Detroit Lakes to Barnesville, Minnesota, and the modification of the license of Station KRVI(FM),¹ Detroit Lakes, to specify Barnesville as its community of license. In support of these reply comments, the following is stated:

¹ After the *NPRM* was issued, the call letters of Station KFGX(FM), Detroit Lakes, Minnesota, were changed to "KRVI". In these reply comments, Triad will refer to the Detroit Lakes station by its new call letters.

I. Introduction.

As demonstrated in Triad's Comments, filed May 15, 2000, the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville, Minnesota, should be denied because the Barnesville community does not warrant a first local service preference, and T&J's reallocation proposal would not result in a preferential arrangement of allotments. However, as demonstrated herein, the Commission should grant the "Comments and Counterproposal," filed May 15, 2000 ("Counterproposal"), by EBC and allot Channel 233C1 to Enderlin, North Dakota, as that community's first local service. Alternatively, in the unlikely event the Commission finds that the proposed reallocation of Channel 236C1 to Barnesville would result in a preferential arrangement of allotments, the Commission should grant both allotment proposals by using Station KRVI's licensed transmitter site as the allotment reference point for the Channel 236C1 allotment at Barnesville.

II. T&J's Comments Demonstrate, *A Fortiori*, that the Proposed Reallocation of Channel 236C1 From Detroit Lakes to Barnesville Would Not Result in a Preferential Arrangement of Allotments.

As demonstrated in Triad's Comments, the community of Barnesville does not warrant a first local service preference because Barnesville is interdependent with the substantially larger Fargo-Moorhead Urbanized Area. Under the fourth FM allotment priority, the proposed reallocation would not result in a preferential arrangement of allotments because it would result in a net loss of service to no less than 32,835 persons, many of whom reside in underserved areas, including seven who reside in a gray area.² Nevertheless, despite the governing case precedent established by the D.C.

² See Triad Comments, pp. 30-31; T&J's "Comments in Support of Proposed Rule Making," filed May 15, 2000 ("T&J Comments"), p. 3.

*Circuit and the full Commission,*³ assuming, *arguendo*, that the Mass Media Bureau (“Bureau”) were to conclude that Barnesville warrants a first local service preference, the proposed reallocation should still be denied because it would not result in a preferential arrangement of allotments.

According to the engineering analysis contained in T&J’s Comments, the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville would result in an even greater loss of service to underserved areas than reflected in Triad’s Comments. T&J states that its reallocation proposal would result in a net loss of service to 32,835 persons within KRVI’s 1 mV/m service contour,⁴ including a loss of service to the following underserved areas, which includes a gray area:

- (i) seven (7) people in a three square kilometer area would receive only one full-time service (gray area);
- (ii) 299 people in an 81 square kilometer area would receive only two full-time services;
- (iii) 1,295 people in a 222 square kilometer area would receive only three full-time services; and
- (iv) 3,600 people in a 427 square kilometer area would receive only four full-time reception services.

T&J Comments, p. 3. All of the population within the gain area of T&J’s reallocation proposal would receive five or more full-time reception services. *Id.*

T&J’s engineering analysis demonstrates that even assuming, *arguendo*, the Bureau finds that the reallocation of Channel 236C1 to Barnesville would warrant a first local service preference under the Commission’s third allotment priority, the gray area that would result from T&J’s reallocation proposal is entitled to equal consideration under the second FM allotment priority. Thus, a first local

³ See generally *Huntington Broadcasting Co.*, 192 F.2d 33 (D.C. Cir. 1951); *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990).

⁴ See T&J Comments, p. 3.

service preference would be offset by the resulting gray area.⁵ In examining T&J's reallocation proposal under the fourth allotment criterion ("other public interest matters"), the net loss of service and significant loss of service to underserved areas that would result from T&J's reallocation proposal dictates that the proposed reallocation of Channel 236C1 to Barnesville would not result in a preferential arrangement of allotments.

In *Nogales and Vail, Arizona*, 15 FCC Rcd 4323 (Allocations Branch 2000) (NPRM), the Bureau expressed concern regarding the proposed reallocation of a station from Nogales to Vail, even though the proposal would bring the community of Vail its first local transmission service. The proposed reallocation in *Nogales* would result in a gain area containing 7,626 people within 2,135 square kilometers. The loss area would include 27,480 people within 1,562 square kilometers. Thus, the proposed reallocation would result in a net loss of service to 19,854 people and a net gain in land area served of 573 square kilometers.⁶ The Commission's engineering analysis also showed that the entire gain area is covered by at least five full-time services. On the other hand, portions of the loss area near Nogales would be left with less than five full-time aural services. Specifically, the reallocation proposal would result in the following underserved areas: (i) five (5) people in a 32 square kilometer area would receive no full-time reception service (white area); (ii) 50 people in a 255 square kilometer area would receive only one full-time service (gray area); and (iii) 21,222 people in a 405 square kilometer area would receive only two full-time services. *Id.* The remainder

⁵ The FM allotment criteria are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

⁶ 15 FCC Rcd at 4326.

of the loss area would receive at least five full-time services.⁷ After acknowledging that the public has a “legitimate expectation that existing service will continue,” and that this expectation must be weighed “independently against the service benefits that may result from reallocating a channel from one community to another,”⁸ the Bureau expressed concern regarding the requested reallocation and “question[ed] the public interest benefits” of the reallocation proposal. *Id.*

In this case, assuming, *arguendo*, the Bureau concludes that the community of Barnesville warrants a first local service preference, the concerns that the Bureau expressed with respect to the reallocation proposal in *Nogales* are equally applicable to T&J’s proposal. For example, if the reallocation were to be approved in *Nogales*, the community of *Nogales* would be left with one operating FM station and an allotment for another FM station, a construction permit for which has expired.⁹ Similarly, if T&J’s reallocation proposal were to be granted, *Detroit Lakes* would be left with one FM station and a 1 kw AM station. Moreover, just as in *Nogales*, T&J’s reallocation proposal would result in a significant loss of service. In *Nogales*, the net loss of service would include 19,854 persons, whereas T&J’s reallocation proposal would result in a net loss of service to 32,835 persons.¹⁰ The gain area for both the *Vail* and *Barnesville* proposals already is well-served because in both instances there are at least five full-time reception services.

⁷ Neither the 70 dBu contour of the existing facility at *Nogales* nor the proposed facility at *Vail* would cover any urbanized area. *Id.*

⁸ See 15 FCC Rcd at 4326, citing *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd at 7097.

⁹ The Bureau noted that it would consider the authorization for the additional FM station if the station sought an extension of its expired construction permit during the pendency of the rulemaking proceeding. 15 FCC Rcd at 4326.

¹⁰ See T&J Comments, p. 3.

Although T&J claims that the loss of service that would result from its proposal is *de minimis*,¹¹ the Bureau gave no indication in *Nogales* that the creation of either a white area encompassing five persons or gray area covering 50 people would be considered *de minimis*. Furthermore, although T&J cites three cases in support of its contention that the loss of service that would result from its proposal is insignificant, not one of those cases offers any support for its position. In *Earle, Pocohantas, and Wilson, Arkansas, and Como and New Albany, Mississippi*, 10 FCC Rcd 8270 (1995), the subject reallocation proposal resulted in a net gain of service to 625,018 people. The Commission's concerns regarding the loss area, which included 46,606 persons, were mitigated by the facts that no portion of the loss area would be served by fewer than three full-time aural services, and the community that was losing a transmission service would continue to be within the city-grade contour of the subject station. *Id.* at 8271. More importantly, the proposed gain area would include 671,624 persons, 26,668 of whom currently were served by four or fewer full-time reception services. Thus, the reallocation proposal in *Earle* not only resulted in a net gain of service to over half a million people, but it provided a new reception service to 26,668 people in underserved areas. T&J's reallocation proposal simply would not provide these substantial public interest benefits.

Similarly, *Huntsville and Willis, Texas*, 10 FCC Rcd 3329 (Allocations Branch 1995), involved an uncontested reallocation proposal in which the station's existing community license would continue to be served by five local transmission services. Thus, there was no loss of service to underserved areas. Moreover, unlike T&J's reallocation proposal, the proposal in *Huntsville* resulted in a net gain in service to 88,371 people.

¹¹ *Id.* at 4.

T&J's citation to *Palestine and Frankston, Texas*, DA 99-538 (Allocations Branch 1999), is equally unavailing. *Palestine* was an uncontested proceeding which involved a net gain in service to 161,922 persons. The proposed reallocation would cover only 29% of the Tyler Urbanized Area, and the loss area would continue to be served by no less than three full-time aural services. Thus, despite T&J's attempt to minimize the net loss of service to 32,835 people that would result from its reallocation proposal -- which would include a significant loss of service to underserved areas and create a gray area -- the cases cited by T&J are easily distinguishable and offer no support for its position.

The Commission repeatedly has recognized that:

[T]he public has a legitimate expectation that existing service will continue and this expectation is a factor we must weigh independently against the service benefits that may result from reallocation of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.^[12]

The Bureau should give substantial weight to the public's expectation that existing service will continue. Indeed, the Bureau has stated that it should not apply Section 307(b) of the Act in a mechanistic manner to "automatically override [its] concerns with disruption to existing service."¹³ Instead, the Bureau has been reluctant to grant a proposal that would result in a loss of service to

¹² *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990) (reconsideration order) (footnote omitted).

¹³ *See Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580, 6586-87 (MMB 1991) (Bureau found that the loss of service to approximately 400,000 people was substantial in both absolute numbers and in relation to the proposed service gains) (subsequent history omitted).

underserved areas,¹⁴ and there is no reason that T&J's reallocation proposal should be subject to any lesser standard. Therefore, because the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville would result in a significant loss of service to underserved areas without any countervailing public interest benefits, it would not result in a preferential arrangement of allotments regardless of whether the Bureau determines that the proposed reallocation would provide the community of Barnesville with its first local transmission service.

III. The Bureau Should Grant EBC's Counterproposal Requesting the Allotment of Channel 233C1 at Enderlin.

A. Enderlin is a Community For Allotment Purposes.

Enderlin, North Dakota, is an incorporated community which has its own city auditor, street department, water department, fire hall, municipal library, post office, and zip code. The community also has its own local phone company, a bank, weekly newspaper, high school, and swimming pool. Enderlin is served by a medical clinic, ambulance service, nursing home, veterinary clinic, and a practicing dentist. Enderlin also has many businesses and social organizations, some of which include a grocery store, four restaurants, a hardware store, lumber company, gas station, and five churches.¹⁵ Thus, as demonstrated in EBC's Counterproposal, Enderlin clearly qualifies as a community for allotment purposes.

¹⁴ See *Silverton and Bayfield, Colorado*, 14 FCC Rcd 21502, 21504 (Allocations Branch 1999).

¹⁵ Information regarding the Enderlin community was obtained via the Internet at the Yahoo! Yellow Pages website.

B. EBC's Counterproposal Would Provide Substantially Greater Public Interest Benefits Than T&J's Reallotment Proposal.

As demonstrated in EBC's Counterproposal, the proposed allotment of Channel 233C1 at Enderlin would bring a first local transmission service to the community and a new primary reception service to 182,766 people.¹⁶ In addition, the allotment of Channel 233C1 to Enderlin would provide a new service to 12,386 persons in an underserved area encompassing 4,641 kilometers. Specifically:

- (i) 24 people within a 33.9 square kilometer area would receive a second full-time reception service, which would eliminate an existing gray area;
- (ii) 3,271 people within a 1,325.2 square kilometer area would receive a third full-time reception service;
- (iii) 3,328 people within a 1,152.7 square kilometer area would receive a fourth full-time reception service; and
- (iv) 5,763 people within a 2,129.7 square kilometer area would receive a fifth full-time reception service.¹⁷

Although Barnesville has a slightly larger population than Enderlin (2,066 versus 997),¹⁸ the respective population sizes of the two communities should not be viewed in isolation. Indeed, T&J and EBC have submitted area and population data regarding the entire service areas of their respective allotment proposals which demonstrate that one would result in a significant loss of service to underserved areas and create a gray area. The other proposal would bring a new reception service to 182,766 persons, including 12,386 people in underserved areas, and eliminate an existing

¹⁶ See EBC Counterproposal, p. 2.

¹⁷ See Engineering Statement, p. 2 and Table 1.0.

¹⁸ Population figures are based on the 1990 U.S. Census.

gray area. Thus, although there is a difference of 1,069 people between the respective populations of Barnesville and Enderlin, the Commission's analysis should not be limited to the respective population sizes of the two communities alone.¹⁹ The combination of a grant of EBC's Counterproposal and a denial of T&J's reallocation proposal would provide substantial public interest benefits, including the following: (i) provide the community of Enderlin with its first local service; (ii) provide a new reception service to 182,766 persons; (iii) provide a new reception service to 12,386 people in underserved areas and eliminate an existing gray area; and (iv) avoid a net loss of service to 32,835 people in underserved areas, including seven of whom would be left with only one full-time reception service. Therefore, the overall public interest benefits that would result from the proposal to allot Channel 233C1 at Enderlin greatly outweigh the relatively small difference in population between Enderlin and Barnesville.

C. EBC's Expression of Interest.

In its Counterproposal, filed May 15, 2000, EBC did not expressly state its intent to submit an application for the requested Channel 233C1 allotment at Enderlin, nor did it expressly state that it would construct the station in the event its application is granted. Nevertheless, EBC's interest in the requested allotment at Enderlin is implicit in its Counterproposal and can be reasonably inferred. Indeed, the Counterproposal states: "*EBC* will bring a first local service to a community well outside the Fargo, North Dakota Urbanized Area."²⁰ EBC also states that its "proposal will not only result in a first local service to Enderlin but a new primary service to 182,766 persons." *Id.* Together, these statements reflect that *EBC* intends to operate a new FM station on Channel 233C1

¹⁹ See *Eatonton and Sandy Springs*, 6 FCC Rcd at 6586 n.40.

²⁰ EBC Counterproposal, p. 2 (emphasis added).

at Enderlin which will provide the community with its first local transmission service, and that its station will provide a new service to 182,766 people.

To the extent there could have been any question concerning EBC's interest in applying for and constructing a new FM station to operate on Channel 233C1 at Enderlin at the time it filed its Counterproposal, EBC made its intentions abundantly clear only three days later through its "Erratum," filed May 18, 2000, in which it stated:

EBC explicitly states herein what is implicit in the filing of its Comments and Counterproposal: EBC desires to obtain a new FM station at Enderlin, North Dakota. If its proposal is adopted, EBC intends to file an application for the Enderlin allotment and, if awarded the construction permit, to build the station promptly.[²¹]

EBC's Erratum makes clear that the above-quoted statements in its Counterproposal could have no interpretation other than that EBC fully intended to apply for and, if its application is granted, construct a new FM facility to operate on Channel 233C1 at Enderlin. Moreover, to the extent EBC's Erratum may have clarified its interest in operating Channel 233C1 at Enderlin, the mere 72-hour period between the filing of its Counterproposal and Erratum could not have prejudiced any party to this proceeding, nor could acceptance of the Erratum undermine the integrity of the Commission's processes in any way with respect to resolving the competing interests in this proceeding. Indeed, EBC expressed its intent to apply for and construct the Channel 233C1 facility at Enderlin on the comment deadline, and made its intentions explicitly clear only three days later, a full 12 days before the reply comment deadline in this proceeding.²²

²¹ EBC Erratum, p. 1.

²² See *Freeport and Cedarville, Illinois*, 13 FCC Rcd 18836 n.3 (Allocations Branch 1998) (Commission refused to dismiss a counterproposal that was not timely served on petitioner's counsel because the untimely service did not prejudice any party or impede the
(continued...)

Triad recognizes that the Commission generally will accept late-filed expressions of interest in a proposed allotment only where there is no opposition to the proposal, and there would be no adverse impact on another pending proposal.²³ However, the facts regarding EBC's expression of interest in the allotment of Channel 233C1 at Enderlin are distinguishable from those in previous Commission cases for a number of reasons. First, as demonstrated above, EBC's "expression of interest" in the Enderlin facility was not untimely. Although it may have been implicit, EBC's statement in its Counterproposal that "EBC will bring a first local service to a community well outside the Fargo, North Dakota Urbanized Area"²⁴ demonstrates that in the event its allotment request is granted, EBC will apply for, and, if its application is granted, construct a new FM station to operate on Channel 233C1 at Enderlin. Thus, this case does not involve a late-filed expression of interest.

Furthermore, even assuming, *arguendo*, that the Bureau were to conclude that EBC's Counterproposal does not constitute a timely expression of interest, the Commission cases involving

²²(...continued)
resolution of the proceeding). *Cf. Boalsburg, Clearfield, et al., Pennsylvania*, 7 FCC Rcd 7653 (Chief, Policy and Rules Div. 1992), *rev. dismissed*, 10 FCC Rcd 12264 (1995), where the Commission permitted a counterproponent, who neglected to provide a reimbursement commitment in its counterproposal, to cure this minor deficiency by providing such a statement in its reply comments. The Commission stated that although it generally requires counterproposals to be "technically and procedurally correct when filed," it does not prohibit minor curative submissions, especially when the procedural infirmity is cured and acceptance of the counterproposal would not require the denial of another proposal in the proceeding. *Id.* at 7654, n.7.

²³ See generally *Santa Isabel, Puerto Rico*, 2 FCC Rcd 3454, 3455 (1987), *aff'd sub nom. Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990); *Moscow, Ohio, et al.*, 5 FCC Rcd 927, 928 (1990); *Woodville and Liberty, Mississippi; Clayton and Jena, Louisiana*, 11 FCC Rcd 4212, n.7 (Allocations Branch 1996).

²⁴ EBC Counterproposal, p. 2 (emphasis added).

a late-filed expression of interest are not applicable to the facts in this proceeding because not one of them involved a timely-filed counterproposal which implicitly reflected the proponent's interest in applying for and constructing the proposed station. As demonstrated above, acceptance of EBC's Erratum and concomitant explicit expression of interest would not prejudice any party to this proceeding, nor would it undermine the integrity of the Commission's processes by delaying the Commission's resolution of the competing proposals in this proceeding. Therefore, the Commission's general prohibition against late-filed expressions of interest should not apply to EBC's Counterproposal.

IV. In the Event the Bureau Concludes that the Reallocation of Channel 236C1 to Barnesville Would Result in a Preferential Arrangement of Allotments, the Bureau Should Grant Both Allotment Proposals.

As demonstrated in EBC's Counterproposal, the proposed allotment of Channel 233C1 to Enderlin is not inconsistent with T&J's proposal to reallocate Channel 236C1 from Detroit Lakes to Barnesville, but, rather, only T&J's proposed transmitter site.²⁵

The proposed reference point for T&J's reallocation proposal is based solely upon T&J's private, economically-motivated consideration that, from its preferred transmitter site, KRVI's city-grade contour would cover the entire Fargo-Moorhead Urbanized Area.²⁶ The Commission repeatedly has held, however, that a mere site preference for an existing station is not a sufficient

²⁵ See EBC Counterproposal, p. 3.

²⁶ Station KRVI's licensed transmitter site is located only 9.2 miles outside of Barnesville. T&J's proposed transmitter site is located over 20 miles away from the proposed community of license, and only one mile outside the Fargo-Moorhead Urbanized Area. See EBC Counterproposal, p. 3.

justification to deny a new allotment to another community.²⁷ Indeed, the Commission has been reluctant to engage in a comparative consideration of competing allotment proposals that would lead to a denial of one based solely on a party's preferred transmitter site.²⁸

The Commission's policy regarding site preferences should apply with even greater force to T&J's reallocation proposal because, as demonstrated herein, if T&J's proposed reference point were to be adopted, the reallocation of Channel 236C1 to Barnesville would result in a significant loss of service to underserved areas and create a gray area. Thus, even assuming, *arguendo*, that the Commission were to conclude that the reallocation of Channel 236C1 to Barnesville would result in a preferential arrangement of allotments, the Commission should reallocate Channel 236C1 to Barnesville only by using the coordinates of Station KRVI's licensed transmitter site as the allotment reference point. The use of KRVI's licensed site as the allotment reference point would enable the Commission to provide a new service at Barnesville, and, at the same time, avoid the significant loss of service to underserved areas and resulting gray area that would contravene the public interest.

Furthermore, the use of Station KRVI's licensed transmitter site as the allotment reference point for the proposed Channel 236C1 at Barnesville would eliminate the conflict between T&J's

²⁷ See, e.g., *Golconda and Metropolis, Illinois, et al.*, 2 FCC Rcd 7266 (Allocations Branch 1987), citing *Andalusia, Alabama*, 49 FR 32201 (1984); *Newberry and Munising, Michigan*, 2 FCC Rcd 5332 (1987).

²⁸ *Bartonville, Illinois*, 6 FCC Rcd 5157 (Allocations Branch 1991), citing *Vacaville and Middletown, California*, 4 FCC Rcd 8315 (Allocations Branch 1989). See also *Bourbon and Columbia, Missouri*, 6 FCC Rcd 250, 251 (Allocations Branch 1991) (Commission declined to consider a party's site preference as anything more than a private preference); *Shreveport, Bastrop, Homer, et al.*, 7 FCC Rcd 470, 474, n.21 (1992) (full Commission refused to deny an upgrade to an existing station that would bring a new service to 28,237 persons in order to accommodate a site preference at another community that was based on economic considerations).

reallotment proposal and EBC's proposal to allot Channel 233C1 at Enderlin. Thus, regardless of the Bureau's determination regarding the timeliness of EBC's expression of interest in its proposal to allot Channel 233C1 at Enderlin, the Bureau should also grant EBC's Counterproposal and allot Channel 233C1 to Enderlin because it would not have an adverse impact upon T&J's reallotment proposal, nor would it undermine the integrity of the Commission's processes by delaying the resolution of this proceeding.²⁹

As demonstrated above, resolving this proceeding in this manner would provide the following substantial public interest benefits: (i) provide a first local service to each of proposed communities; (ii) provide a new reception service to 182,766 people, including 12,386 persons in underserved areas, (iii) eliminate an existing gray area covering 33.9 square kilometers; and (iv) eliminate the significant loss of service to underserved areas and gray area that would result from granting T&J's reallotment proposal at its preferred transmitter site. Therefore, in the event the Commission determines that the proposed reallotment of Channel 236C1 to Barnesville would result in a preferential arrangement of allotments, the Commission should grant both allotment proposals by using KRVI's licensed transmitter site as the reference point for the Barnesville allotment.³⁰

²⁹ See *Freeport and Cedarville, Illinois*, 13 FCC Rcd 18836, n.3. (Allocations Branch 1998) (rather than dismissing a counterproposal that was not timely served on petitioner's counsel, the Bureau granted both proposals by allotting an alternative channel to the community proposed in the defectively-served counterproposal).

³⁰ See *Freeport and Cedarville, Illinois*, 13 FCC Rcd 18836, n.3. Cf. *Middlebury, Berlin and Hardwick, Vermont*, 15 FCC Rcd 131, 133 (Allocations Branch 2000) (Bureau accommodated both petitioner and counterproponent by allotting an alternative channel to the community specified in the counterproposal).

V. Conclusion.

As demonstrated herein as well as in Triad's Comments, the proposal set forth in the *NPRM* to reallocate Channel 236C1 from Detroit Lakes to Barnesville should not be adopted because it would not result in a preferential arrangement of allotments. Instead, the Bureau should adopt EBC's Counterproposal and allot Channel 233C1 to Enderlin, North Dakota, as that community's first local transmission service. As shown above, the allotment of Channel 233C1 at Enderlin would provide a new reception service to 182,766 people, including 12,386 persons in underserved areas. The allotment of Channel 233C1 at Enderlin also would serve the second FM allotment priority by providing a second full-time reception service to a 33.9 square kilometer area, which would eliminate an existing gray area.

In the event the Bureau concludes that the proposed reallocation of Channel 236C1 from Detroit Lakes to Barnesville would serve the public interest, the Bureau should adopt both allotment proposals by using Station KRVI's licensed transmitter site as the allotment reference point for the Channel 236C1 reallocation at Barnesville. Resolving the conflicting proposals in this manner would provide a new service at Barnesville and avoid the significant loss of service to underserved areas, including a gray area, that would result from adopting T&J's proposal at its preferred transmitter site. Furthermore, using KRVI's licensed transmitter site as the allotment reference point for the Barnesville allotment also would enable the Bureau to avoid any question concerning the timeliness of EBC's expression of interest in its own proposal to allot Channel 233C1 at Enderlin.

WHEREFORE, in light of the foregoing, Triad Broadcasting Co., L.L.C., respectfully requests that the proposal to reallocate Channel 236C1 from Detroit Lakes to Barnesville be DENIED, and that the counterproposal to allocate Channel 233C1 at Enderlin, North Dakota, be GRANTED.

Respectfully submitted,

TRIAD BROADCASTING CO., L.L.C.

By: 

Harry C. Martin
Andrew S. Kersting

Its Counsel

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Arlington, Virginia 22209
(703) 812-0400

May 30, 2000

ATTACHMENT

Engineering Statement of Roy P. Stype, III

**ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS**

MM DOCKET 00-53

CHANNEL 233C1 - ENDERLIN, ND

**Triad Broadcasting Co., LLC
Fargo, ND**

May 24, 2000

**Prepared For: Mr. David J. Benjamin
Triad Broadcasting Co., LLC
2511 Garden Road
Building A, Suite 104
Monterey, CA 93940-5376**

CARL E. SMITH CONSULTING ENGINEERS

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Engineering Affidavit

Roy P. Stype, III

Engineering Statement

Fig. 1.0 - Map Exhibit Depicting Underserved Portions of Proposed Service Area - Channel 233C1 - Enderlin, ND

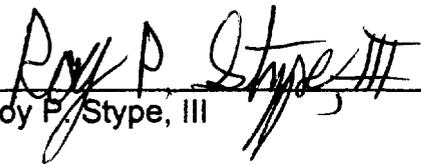
Table 1.0 - Area and Population Data for Underserved Portions of Proposed Service Area - Channel 233C1 - Enderlin, ND

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

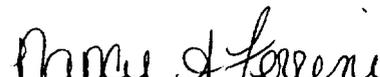
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Triad Broadcasting Co., LLC to prepare the attached "Engineering Statement In Support of Reply Comments - MM Docket 00-53 - Channel 233C1 - Enderlin, ND."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **May 24, 2000**.



Notary Public

NANCY A. FERRINI, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires March 13, 2005

/SEAL/

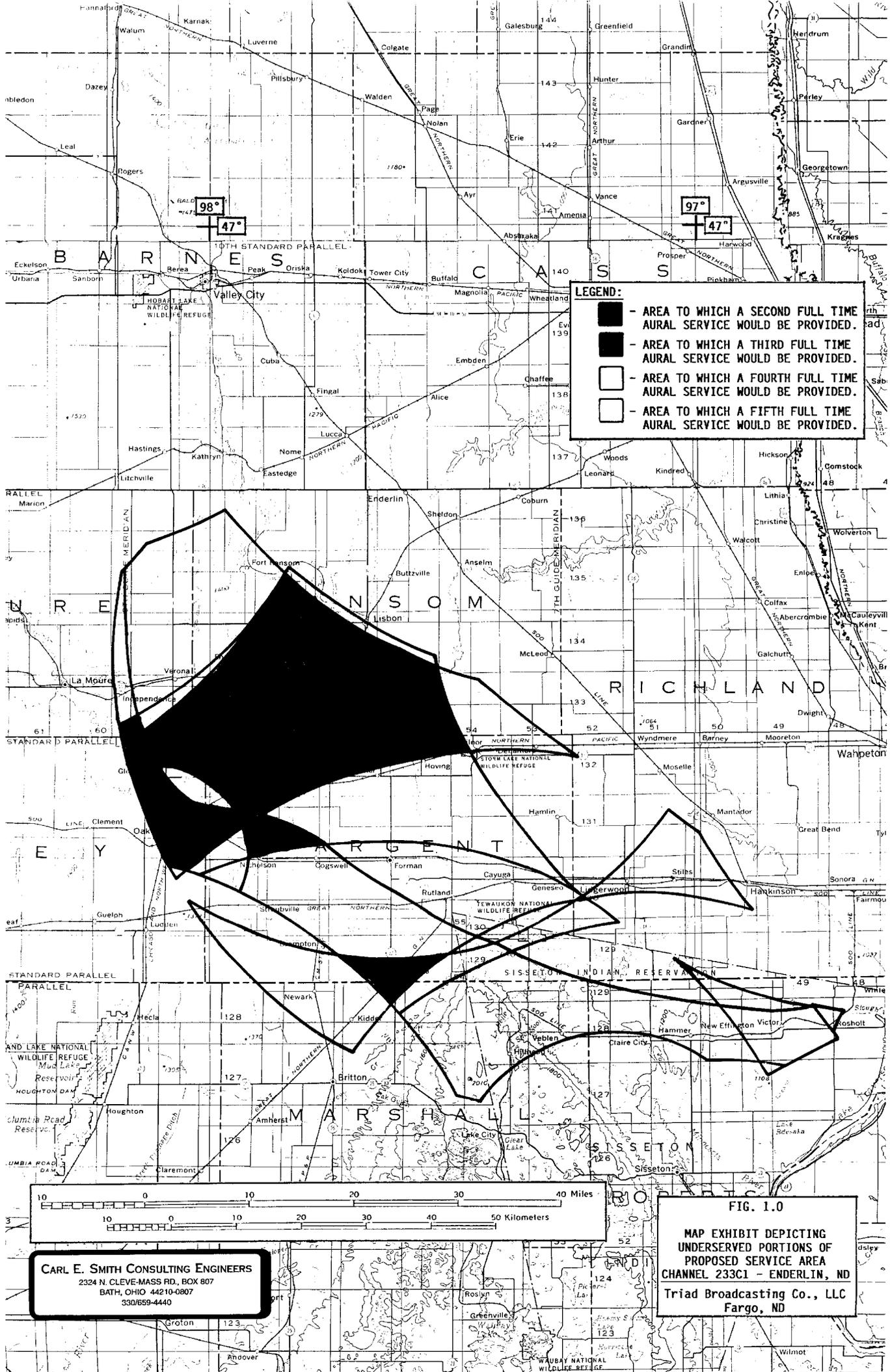
ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Triad Broadcasting Co., LLC. It supports reply comments in MM Docket 00-53, which proposes to reallocate Channel 236C1 from Detroit Lakes, Minnesota to Barnesville, Minnesota and modify the license of KRVI(FM) - Detroit Lakes, Minnesota to specify operation on Channel 236C1 in Barnesville. On May 15, 2000, the Enderlin Broadcasting Company filed a counter-proposal in this proceeding proposing the allotment of Channel 233C1 to Enderlin, North Dakota as its first local service. This engineering statement documents that the allotment of Channel 233C1 to Enderlin would provide significant service to underserved areas.

Studies were conducted to identify all other stations which provide full time aural service to any portion of the proposed service area for Channel 233C1 in Enderlin. For all FM stations, uniform terrain was assumed and all classes of stations were assumed to provide service to their 1 mV/m contour, pursuant to FCC policy. All commercial FM stations, with the exception of Class A and Class C stations, were assumed to be operating with the maximum facilities permitted for their class. Calculations for commercial Class C stations and all noncommercial educational FM stations were based on the stations' actual notified operating facilities. Class A stations were considered to be operating with the greater of their actual operating facilities or the former Class A maximum of 3 kilowatts effective radiated power at 100 meters above average terrain. All AM contours were projected utilizing the notified nighttime facilities for each station and conductivity data from FCC Figure M3. Class A AM stations were considered to provide service to their 0.5 mV/m groundwave contours, while all other AM stations were considered to provide service to their nighttime interference free contour, as defined by

Section 73.182 of the FCC Rules. Class D AM stations operating at night with sub-minimum facilities were not considered in these studies, due to the fact that these stations operate on a secondary basis at night and are considered by the FCC to be daytime only stations, in spite of their limited nighttime facilities. These studies found that significant portions of this proposed service area presently receive fewer than five full time aural services.

Figure 1.0 is a map exhibit depicting the portions of this proposed service area which presently receive fewer than five full time aural services and the number of full time aural services which will be received in each portion of this underserved area if Channel 233C1 is allotted to Enderlin. As shown in this figure, a portion of this proposed service area will receive a second full time aural service if Channel 233C1 is allotted to Enderlin. Table 1.0 presents a tabulation of the areas and populations in the proposed Enderlin service area which presently receives less than five full time aural services.



LEGEND:

- AREA TO WHICH A SECOND FULL TIME AURAL SERVICE WOULD BE PROVIDED.
- AREA TO WHICH A THIRD FULL TIME AURAL SERVICE WOULD BE PROVIDED.
- AREA TO WHICH A FOURTH FULL TIME AURAL SERVICE WOULD BE PROVIDED.
- AREA TO WHICH A FIFTH FULL TIME AURAL SERVICE WOULD BE PROVIDED.

CARL E. SMITH CONSULTING ENGINEERS
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FIG. 1.0
 MAP EXHIBIT DEPICTING
 UNDERSERVED PORTIONS OF
 PROPOSED SERVICE AREA
 CHANNEL 233C1 - ENDERLIN, ND
 Triad Broadcasting Co., LLC
 Fargo, ND

TABLE 1.0

AREA AND POPULATION DATA FOR UNDERSERVED
 PORTIONS OF PROPOSED SERVICE AREA
CHANNEL 233C1 - ENDERLIN, ND
 Triad Broadcasting Co., LLC
 Fargo, ND

<u>Portions of Proposed Service Area Which Will Receive:</u>	<u>Area (Square Kilometers)</u>	<u>Population (1990 Census)</u>
Second full time aural service	33.9	24
Third full time aural service	1,325.2	3,271
Fourth full time aural service	1,152.7	3,328
Fifth full time aural service	2,129.7	5,763
Total underserved area	4,641.5	12,386

CERTIFICATE OF SERVICE

I, Mary Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 30th day of May, 2000, copies of the foregoing "Reply Comments of Triad Broadcasting Co., L.L.C." were hand delivered or mailed first-class, postage pre-paid, to the following:

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Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
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Mary Haller

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