

FCC FILE NO. 00-1904

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. <u>98-59</u>
FM Broadcast Stations.)	RM-9859
(Casper, Guernsey, Lusk, and Sinclair, Wyoming) ¹)	RM-9886

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 8, 2000;

Released: August 18, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making*, 13 FCC Rcd 852 (1998), issued at the request of Citicasters Co. ("petitioner") proposing the allotment of Channels 228C1, 243C1 and 263C1 at Casper, Wyoming, as the community's eighth, ninth, and tenth local commercial FM transmission services (RM-9859). Petitioner filed comments in support of the proposal reaffirming its intention to apply for the respective channels, if allotted. Comments and a counterproposal were filed by Mountain States Radio, Inc. ("Mountain States") proposing the allotment of Channel 228C1 at Guernsey, Wyoming, Channel 242C at Lusk, Wyoming, and Channel 262C at Sinclair, Wyoming, as each community's first local aural transmission service (RM-9886).² Reply comments were filed by petitioner and Mount Rushmore Broadcasting, Inc. ("Mount Rushmore").³

¹ The communities of Guernsey, Lusk, and Sinclair, Wyoming, have been added to the caption.

² The counterproposal was placed on Public Notice on May 31, 2000 (Report No. 2114), RM-9886. We note that the request for Channel 228C1 at Guernsey, Wyoming was inadvertently placed on Public Notice. Counterproposals are required to be "technically correct and substantially complete" at the time they are filed. See e.g., Fort Bragg, California, 6 FCC Rcd 5817 (1991); Provincetown, et al., Massachusetts, 8 FCC Rcd 19 (1992); and Sanford and Robbins, North Carolina, 12 FCC Rcd 1 (1997). Specifically, Mountain States' requested site (42-24-44 NL and 104-50-13 WL) for Channel 228C1 at Guernsey, Wyoming, is short-spaced to the vacant allotment site for Channel 228A at Pine Ridge, South Dakota, and to the allotment reference coordinates for Channel 281A at Guernsey, Wyoming. As a result of the technical deficiencies inherent in the Guernsey counterproposal, it is rejected. Therefore, only the requests for Channel 242C at Lusk, Wyoming, and Channel 262C at Sinclair, Wyoming will be considered.

We note that in MM Docket No. 98-151, Channel 281A was allotted to Guernsey, Wyoming, as the community's first local aural transmission service. See Douglas and Guernsey, Wyoming, 15 FCC Rcd 9177 (2000); 65 FR 36374, June 8, 2000.

³ In its reply comments, Mount Rushmore also includes a proposal to institute a proceeding to reevaluate the Commission's FM allotment priorities, claiming that the current allotment scheme discriminates against minorities. Such a proposal is not appropriately filed in an adjudicatory proceeding such as this and will not be considered further. In the alternative, Mount Rushmore proposes the allotment of Channel 228A at Lusk and Elk Mountain, Wyoming, Channel 243A to Medicine Bow and Manville, Wyoming, and the Channel 263A at Encampment, Wyoming and Channel 263C1 at Fort Washakie, Wyoming, As stated in the Notice, (continued....)

2. In support of its counterproposal proposal, Mountain States states that Lusk is an incorporated community with a 1990 U.S. Census population of 1,504 persons. It is the county seat of Niobrara County (population 2,499) and is also listed in the 1998 Rand McNally Road Atlas. Mountain States also states that Sinclair is an incorporated community and listed in the 1990 U.S. Census with a population of 500. It is also listed in the 1998 Rand McNally Road Atlas. Sinclair is located in Carvin County (population 16,659). Mountain States further states that the proposed allotment at Lusk and Sinclair, Wyoming, would provide each community with its first local aural transmission service consistent with priority (3) of the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).⁴ Mountain States affirms that it will apply for the respective channels, if allotted.

3. As an initial matter, we find that Lusk and Sinclair are “communities” for allotment purposes.⁵ Conflicting proposals are considered on a comparative basis with the allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, *supra*, serving as a guide. Our staff search reveals that there are no alternate channels for any of the communities involved. The allotment of three Class C1 channels would provide Casper with its 17th^b local aural transmission service,⁶ triggering priority (4)--other public interest matters, whereas the allotment of Class C channels at Lusk and Sinclair would provide each community with its first local aural transmission, triggering priority (3). Therefore, we find that the public interest would best be served by allotting Channel 228C1 at Casper, Wyoming, Channel 242C at Lusk, Wyoming, and Channel 262C at Sinclair, Wyoming.

Technical Summary

4. An engineering analysis has determined that Channel 228C1 can be allotted at Casper in compliance with the Commission’s minimum distance separation requirements with a site restriction of 7.9 kilometers (2.2 miles) southeast to avoid a short-spacing to the allotment reference site for Channel 228A at Moorcroft, Wyoming.⁷ Additionally, Channel 242C can be allotted to Lusk in compliance with the Commission’s minimum distance separation requirements at city reference coordinates;⁸ and Channel 262C can be allotted to Sinclair with a site restriction of 8 kilometers (5 miles) north at petitioner’s requested site.⁹

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and

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counterproposals are to be advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. See 1.420(d) of the Commission’s Rules. Accordingly, Mount Rushmore’s counterproposal will not be considered further.

⁴ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service, and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁵ Our staff research reveals that Lusk and Sinclair have the social, economic, cultural, or governmental indicia which identify themselves with the respective communities.

⁶ Casper presently has two AM, five noncommercial educational, and seven FM transmission services.

⁷ The coordinates for Channel 228C1 at Casper are 42-47-45 North Latitude and 106-22-53 West Longitude.

⁸ The coordinates for Channel 242C at Lusk are 42-45-42 North Latitude and 104-27-06 West Longitude.

⁹ The coordinates for Channel 262C at Sinclair, Wyoming are 41-51-01 North Latitude and 107-06-48 West Longitude.

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 October 2, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Casper, Wyoming	228C1, 233C, 238C, 247C1 273C, 279C, 284C1, 295C
Lusk, Wyoming	242C
Sinclair, Wyoming	262C

6. Filing windows for Channel 228C1 at Casper, Wyoming, Channel 242C at Lusk, Wyoming, and Channel 262C at Sinclair, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

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

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau (202) 418-2180. Questions related to the application filing process 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