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OCT 23 2000

Before the
Federal Communications Commission
Washington, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 00-161
)
Amendment of Section 73.202(b),)
Table of Allotments,) RM-9929
FM Broadcast Stations)
(Fort Bridger, WY and Woodruff, UT))

To: Chief, Allocations Branch

COMMENTS

KGNT Inc., by its attorney, hereby submits its Comments with regard to the *Notice of Proposed Rule Making*, DA 00-2018, issued with respect to the proposal of M. Kent Frandsen ("Frandsen") to reallocate Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah. With respect thereto, the following is stated:

Frandsen currently is the permittee of Station KNYN(FM), Fort Bridger, Wyoming. In his Petition for Rule Making, Frandsen has requested the reallocation of Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah, as its first local transmission service. Frandsen claims that the proposed reallocation would be in the public interest. For the reasons below, Frandsen's request should be denied.

The Commission will allow an allotment to be reassigned to a new community of license where the new allotment is mutually exclusive with the current allotment, and the reallocation will result in a preferential arrangement of allotments. See, e.g., Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). The

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Commission's has an established allotment criteria which was set forth initially in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982), which establishes the following allotment priorities:

- (1) first full-time aural service
- (2) second full-time aural service
- (3) first local service
- (4) other public interest matters

In order to be granted, a proposed change of communities of license must result in a preferential arrangement of allotments. In order to determine whether a proposal will result in a preferential arrangement of allotments, the FCC compares the existing and proposed arrangement of allotments using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, ¶ 25 (1989).

In this case, that test cannot be satisfied. The allotment current is assigned to Fort Bridger, a community of 200 persons. *Fort Bridger, WY*, 4 FCC Rcd 5395 (Chief, Allocations Branch 1989). The community has assigned to it no other aural service. In contrast, Frandsen is seeking to reallocate the channel to the new, smaller community of Woodruff. This clearly would not result in a preferential arrangement of allotments, insofar as it would deprive the larger community of Fort Bridger of its only local service (Priority "3").

Moreover, no benefit to the public appears to exist. Frandsen claims that the reallocation will not involve a change of transmitter sites. Petition at 2. Thus, service *already* can be

provided to “Woodruff” without depriving the residents of Fort Bridger of its only existing aural service. As the Commission found in *Van Wert, OH and Monroeville, IN*, 7 FCC Rcd 6519 (Chief, Allocations Branch 1992), where there would be “no improvement in the reception service already provided by the station, since petitioner has not stated an intention to move to a site different than that specified” in its outstanding authorization, and petition *already* will provide the proposed new community with a 70 dBu city-grade signal and there is no evidence that “petitioner is unable to provided [its new proposed community] with any specialized service” already, the Commission believed that adoption of the proposal would justify the proposed disruption to the Table of Allotment. The same policy considerations apply in this case.

The only explanation for the desire to change communities of allotment that may exist lies in the freedom that it will give Frandsen to in actuality *change* transmitter sites at some point of time in the future. However, granting that freedom, in this case, will not be in the public interest. In a prior rule making proceeding filed before the Commission, *Fort Bridger, WY and Hyrum, UT*, MM Docket No. 99-232, RM-9321, Frandsen was forced to submit a study showing the effect a transmitter site move would have upon the number of aural services that will be available within the “loss” area. See the *Reply Comments* filed in that proceeding on August 31, 1999. As seen in the Gain and Loss Study prepared by deTreil Lundin & Rackley in that proceeding, a change of transmitter site for the station in the direction of Woodruff (to the northwest of Fort Bridger) will conversely result in a loss area in the southeasterly portion of the current construction permit contour. In the “loss” areas that will be created in that region, the areas clearly are underserved: as seen on the map from that Docket attached hereto as Attachment 1, only 0-3 aural services will remain if such a transmitter site move occurs. Under the

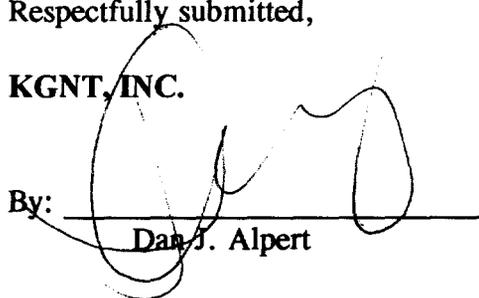
Commission's criteria, those areas therefore, by definition, are underserved.

In these unique circumstances, therefore, any allotment modification that may result in the ability of a permittee to create a white, grey, or other underserved area clearly would be contrary to the goals of Section 307(b) of the Communications Act (47 U.S.C. § 307(b)), and contrary to the policies adopted in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In short, if Frandsen is sincere that this proposal "does not involve a site change" (Petition at 2), it is a request that elevates form over substance, since there will be no net benefit to the public insofar as the same areas that would be served before will be served even following grant of its request. In such case, under the principles applied in *Van Wert, OH*, the proposal should not be granted. Conversely, if, however, the request is a modification of its prior attempt to change communities of license to the Logan, Utah region, and is a mere precursor to such a move, it is objectionable for the same reasons as before – namely the allotment and construction permit, as they currently exist, provide unique benefits to the local public by allowing for first, second and third service. Any attempt on the part of Frandsen to deprive the region of that future service through manipulation of the Commission's rules and policies should be rejected. Therefore, for several reasons, it is appropriate for the proposed reallocation to be denied.

WHEREFORE, it is respectfully requested that the proposal contained in the Petition for Rule Making filed by M Kent Frandsen be denied, and that the information and arguments presented herein be fully considered by the Commission.

Respectfully submitted,

KGNT, INC.

By: 

Dan J. Alpert

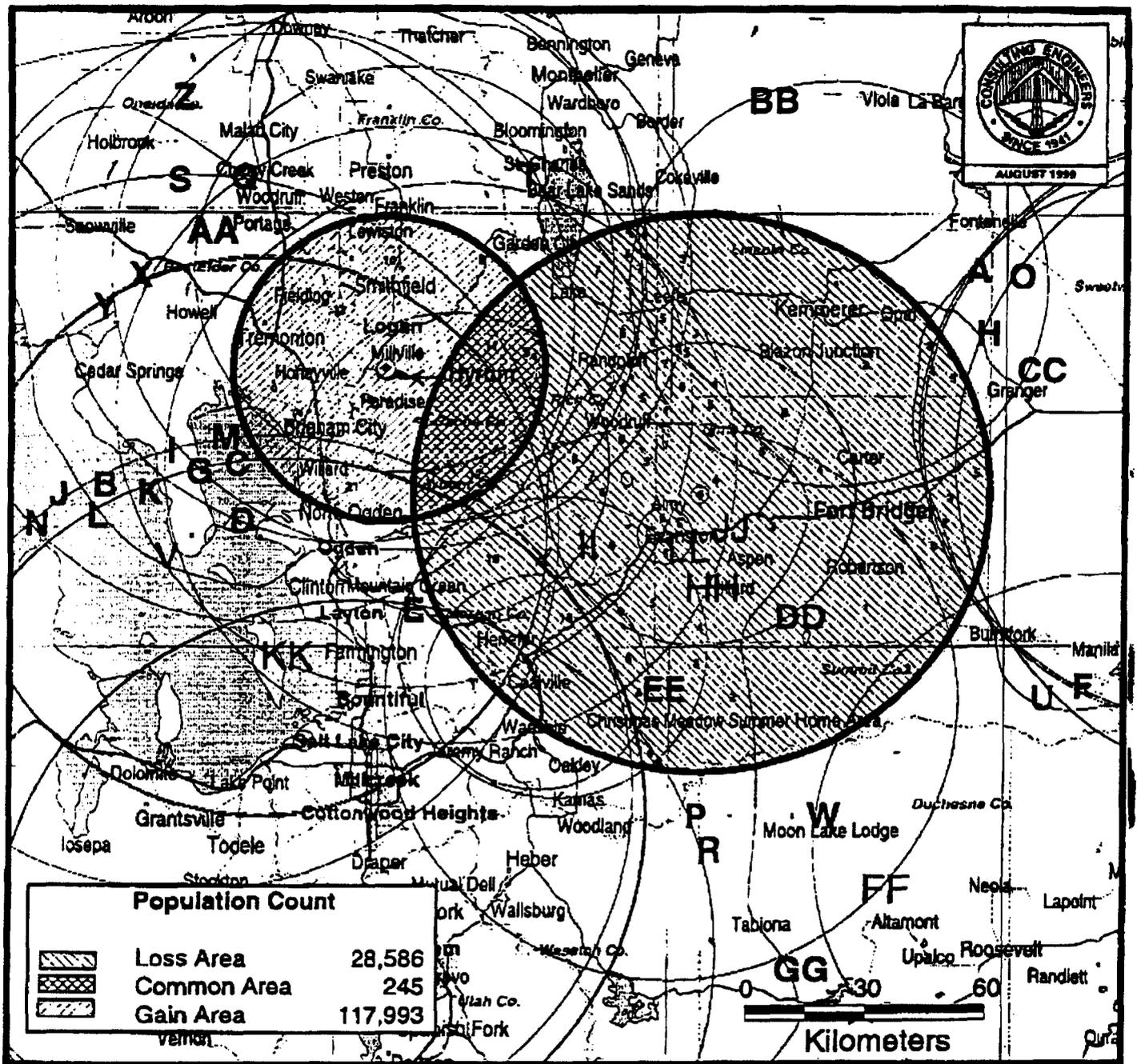
Its Attorney

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October 23, 2000

ATTACHMENT 1

Figure 1



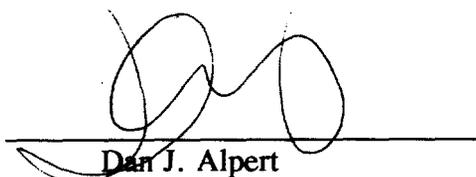
GAIN AND LOSS AREA STUDY

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on October 23, 2000 the foregoing document is being served by First Class Mail, postage prepaid, to the following persons:

Ellen Masters, Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20006


Dan J. Alpert