

Federal Communications Commission

DA 00-2372

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

In the Matter of RECEIVED)
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Amendment of Section 73.202(b),) MM Docket No. 99-220 /
Table of Allotments,) RM-9601
FM Broadcast Stations.) RM-9636
(Darby and Stevensville, Montana))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 13, 2000

Released: October 20, 2000

By the Chief, Allocations Branch:

1. In response to Petitions for Rule Making filed separately by the Battani Corporation ("Battani") and Mountain West Broadcasting ("Mountain West") that are mutually exclusive, the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 9365 (1999), requesting new allotments at Darby and Stevensville, Montana. Battani, Mountain West and Michael Radio Group ("MRG") filed comments. No other comments were received in response to the Notice.

2. As stated in the Notice, Mountain West proposed the allotment of Channel 300A at Darby, Montana (RM-9601), as the community's first local broadcast service. The Notice stated that Darby is an incorporated community located in Ravalli County with a population of 625 people, is listed in the U.S. Census, and has its own post office and zip code (59829). Battani proposed the allotment of Channel 300C2 at Stevensville, Montana, as a second local service (RM-9636).¹ Stevensville is located in Ravalli County, has its own post office and zip code (59870), and has a population of 1,221 people according to the 1990 U.S. Census.

3. In comments, Mountain West continues to support the allotment of Channel 300A at Darby. Mountain West argues that Channel 300A should be allotted to Darby as the community would receive its first local service while allotment of Channel 300C2 at Stevensville would be a second local service. According to Mountain West, Channel 250C2 can be allotted to Stevensville with a site restriction 25.1 kilometers southwest of the community if the Commission determines that Stevensville is deserving of a second service. MRG, permittee of Station KREO, Superior, Montana, supports the allotment of Channel 300A at Darby as a first local service. MRG states that it is in the process of upgrading its facilities at Superior from a Class A facility to a full Class C station and that the allotment

¹ Channel 283A was allotted to Stevensville, Montana, in MM Docket No. 98-115, at the request of L. Topaz Enterprises, Inc. (13 FCC Rcd 22181 (1998)). The Report and Order gave an effective date of December 21, 1998, stating that the issue of opening a filing window would be addressed by the Commission in a subsequent order. Channel 283A at Stevensville, Montana, is included in Auction No. 37, scheduled for February 21, 2001. See Public Notice Dated September 29, 2000, DA No. 00-2232.

at Stevensville would potentially prevent this upgrade to be made. MRG further states that it does not object to an allotment at Stevensville if an alternate channel is located that does not conflict with the contemplated upgrade of Station KREO. Battani supports the allotment of Channel 300C2 at Stevensville. Battani argues that Stevensville is a larger community and should be preferred over an allotment at Darby. Battani also argues that although Channel 283A is allotted to Stevensville, the channel is vacant and that it should not be considered a service until a construction permit is issued for the channel. Therefore, allotment of Channel 300C2 at Stevensville should be considered a "first" local aural service as Channel 283A is vacant with no applications on file at the Commission. Moreover, Battani points out that allotment of channel 300C2 at Stevensville will provide city-grade service to Darby and Stevensville, while allotment of Channel 300A at Darby will provide no service for Stevensville.

4. In an attempt to resolve the conflict between Darby and Stevensville, the engineering staff conducted a channel search for alternate channels. Our study, contrary to comments filed by Mountain West, indicates that there are no alternate channels available for allotment to either community to resolve the conflict. Conflicting proposals, such as have been filed in this proceeding, are generally considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² Neither Mountain West nor Battani demonstrated that the requested allotment at Darby or Stevensville would provide any first or second fulltime aural reception service, thus eliminating priorities 1) and 2). Therefore, we believe that the public interest would be best served by the allotment of Channel 300A at Darby, as a first local aural service, priority 3), than by the allotment of Channel 300C2 at Stevensville as a second local aural service, priority 4). In response to Battani, we recognize that Channel 283A at Stevensville is not an operating station, but an allotment has been made to the community providing the opportunity for a first local service. Under our precedent, this vacant allotment constitutes a first local service. See, e.g., Third Report and Order (Roanoke Rapids, North Carolina), 9 FCC 2d 672 (1967), cited in Change of Community of License Reconsideration Order, 5 FCC Rcd 7094, 7099 n.16 (Commission 1990). Thus, the allotment of Channel 300C2 at Stevensville would provide the community with a second service, depriving Darby of the opportunity for a first local service. Channel 300A can be allotted to Darby, Montana, without a site restriction.³

5. 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 December 4, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

² The 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 given to priorities (2) and (3).]

³ The coordinates for Channel 300A at Darby are 46-01-18 NL and 114-10-42 WL.

Community	Channel Number
Darby, Montana	300A

6. A filing window for Channel 300A, Darby, Montana, 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.
7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
8. IT IS FURTHER ORDERED, That the petition filed by The Battani Corporation (RM-9636) IS DENIED.
9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 300A, Darby, Montana, 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