

Edward Czelada
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JUN 11 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 11, 2001

Cover Letter

Dear Magalie Roman Salas, following is an original and four copies of a **Petition For Reconsideration** in MM Docket No. 01-33j RM-10060 for a proposal to reallocate 221C3 to Cass City, MI.

Sincerely,

Edward Czelada

Edward Czelada
3302 N. Van Dyke
Imlay City, MI 48444
(810) 724 2638

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

RECEIVED

JUN 11 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-33
FM Table of Allotments,)	RM-10060
FM Broadcast Stations.)	
)	
(Caro and Cass City, Michigan))	

Petition For Reconsideration

June 11, 2001
By: Edward Czelada

1. Background. Before the Allocations Branch is a proposal to amend the FM Table of Allotments in Section 73.202(b). The proposal involves a change of community of license that would provide a first local service at Cass City on channel 221C3 at the request of Edwards Communications, L.C., licensee of Station WIDL (FM) Caro, Michigan on channel 221A. The Commission asked for comments and counterproposals with a comment deadline of April 2, 2001 and a reply comment deadline of April 17, 2001. A counterproposal was timely filed by Edward Czelada ("Czelada") asking for the substitution of channel 297C3 instead of 221C3 at Cass City so that spectrum in the reserved portion of the FM band may be preserved. On May 4, 2001 the Commission approved the Change of WIDL from 221A at Caro to 221C3 at Cass City stating it was in the "public interest" and that "no comments or counterproposals" were received (copy attached). After reviewing of the May 4, 2001 Report and Order that was silent on the Czelada's counterproposal a fax was sent by Czelada with a "FCC date stamped" copy of the counterproposal (copy attached) to the attention of Mr. John Karousos. The FCC staff gave no direct response to the contact attempts by Czelada however on May 11, 2001 an Erratum was released stating that a footnote was "inadvertently omitted" and that the counterproposal was "not considered" because it

was "defective when filed" according to the Commission (copy attached). This instant Petition For Reconsideration is timely filed.¹

2. *Discussion.* We contend that the counterproposal was not given equal consideration as required under due process and 307(b). We believe the counterproposal may have been simply misplaced or overlooked until after Czelada's fax was sent on May 7, 2001. Then an attempt was made by Commission staff to "gloss over" the error by issuing a belated response in the form of an Erratum and stating that there was footnote "inadvertently omitted". This however, does not square with the facts in the May 4, 2001 Report and Order in which the Commission unequivocally stated, "No comments or counterproposals were received". This indicates the Commission had no knowledge of the counterproposal until May 7, 2001 when the fax was sent to Mr. Karousos' attention. It is also worth noting the even after numerous phone calls, emails and a fax to the Commission, the Commission never responded directly to Czelada instead the Commission issued a Erratum 6 days later in manner that "glosses over" numerous inconsistencies. It is obvious the Erratum was not intellectually correct considering the timing of the events. A win-win solution would result if 297C3 was allocated to Cass City instead of 221C3 providing increased public service to WIDL, as well as, the reserved band. 307(b) states that: "In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." It's the allocation branches duty to treat all FM spectrum fairly as required under law of 307(b). Strict interpretation of 307(b) requires "fair and efficient distribution" whether or not a freeze is in effect because the U.S. law would override any policy or docket in conflict with 307(b) because there is

¹ On May 11, 2001 the commission issued a significant Erratum, directly responding to the Counterproposal that effectively extends the Recon deadline, to June 11, 2001.

"demand for the same". The allocation branch deals primarily with commercial FM frequencies but they must consider the potential preclusionary effects of such allocation on the reserved portion of the band especially in light of the freeze that currently exists with reserved portion of the band and the expression of interest for 218 C3 at Ubly that was provided in the counterproposal. Czelada would have simply applied for channel 218C3 at Ubly, MI if the current freeze on new non-commercial stations was not in effect, since that option was not available Czelada felt it was in the best interest of all parties to resolve the issue in the open proceeding to avoid forcing a later channel change to WIDL by a new rulemaking proceeding after construction had been completed on WIDL on 221C3 at Cass City². Section 303(g) of the Communications Act of 1934 also requires the Commission to: "Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." Consideration of the 303(g) requires the "larger and more effective use of radio in the public interest" and cannot be ignored just because of the freeze on the reserved portion of the band. In MM Docket 95-31 which instated a "temporary freeze" upon the reserved portion of the band is silent on the scenario in this instant case, but it is obvious from the language in the Docket that the commission was concerned with the potential preclusionary effects of a freeze on the reserved band and encouraged applicants to apply on a commercial channel if a preclusion takes place³. The obvious solution to this dilemma is to allocate 297C3 to Cass City, which would provide the same power Edwards requested while not precluding the opportunity for 1st and 2nd and non-commercial service areas on 218, 219, and 220. The Commission states in the Erratum that 297C3 cannot be allocated to Cass City. However, from the

² We used the word "Allocate" in the counterproposal to describe the future use of 218C3 at Cass City; this is to not be confused with a 73.202 Allocation for commercial channels.

³ Excerpt from MM Docket 95-31: "The filing freeze is limited to reserved NCE channels. There is a similar freeze in place on non-reserved channels, while the Commission transitions to an auction environment for those channels. Should the staff lift the freeze on non-reserved channels prior to lifting the freeze on reserved channels, NCE applicants will have the option at that time to apply for non-reserved channels, subject to their participation in any auctions that may result consistent with the policies and regulations established herein."

reference coordinates provided herein the 70 dBu (F 50,50) does cover the entire community of Cass City.⁴

We acknowledge that due to a data processing error a slightly short-spaced set of reference coordinates for the 297C3 allocation was supplied to the Commission in the counterproposal. The correct coordinates for the 297C3 proposal at Cass City to 43-42-00, 83-55-30. (It is worth noting that the Commission has a very serious error in coordinates released in the May 4 Report Order in which the latitude is 5 degrees higher than correct coordinates.⁵) If for some reason it is determined that 297C3 cannot be allocated to Cass City then the Commission should consider whether 221A or 297A would be better suited for Cass City.

3. *Conclusion:* We respectfully request that the Commission reconsider the May 4, 2001 Report and Order and the May 11, 2001 Erratum and determine that 297C3 can be allocated to Cass City to preserve scarce reserved band spectrum.

Respectfully submitted,

By: Edward Czelada
Edward T. Czelada

3302. N. Van Dyke
Imlay City, MI 48444
(810) 724 2638
June 11, 2001

⁴ Based on a full Class C3 of 25 kW at 100 Meters HAAT at the reference coordinates (43-42-00, 83-55-30). The coordinates meet US mileage separation requirement of section 73.207. Should more engineering data be requested the Commission may request coverage map demonstrating community coverage.

⁵ The latitude coordinates listed in the Report and Order are 48-38-20, which is outside of the United States' borders.

CERTIFICATE OF SERVICE

I certify that on this 11th day of June 2001, I caused a copy of the foregoing "Petition For Reconsideration" to be mailed via first class postage prepaid mail to the following:

Edwards Communications, L.C.
C/O John S. Neely
Miller and Miller, P.C.
P. O. Box 33003
Washington, DC 20033

Edward Czelada

Edward Czelada

Federal Communications Commission

DA 01-1153

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Caro and Cass City, Michigan))	MM Docket No. 01-33
)	RM-10060
)	
(Warsaw and Windsor, Missouri))	MM Docket No. 01-34
)	RM-10061

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 25, 2001

Released: May 4, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to allot new channels in four separate localities. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, Edwards Communications, L.C., licensee of Station WIDL(FM) Caro, Michigan, and D&H Media, permittee of Station KWKJ(FM), Warsaw, Missouri, filed comments reiterating that it will file an application for construction permit at each locality to effectuate the change of community if the channel is reallocated. D&H Media also filed comments as requested giving additional information with respect to underserved loss areas and the public interest benefit in the change of community. We received no other comments or counterproposals.

2. Both petitioners filed their proposals for the reallocations in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹

3. This is a multiple docket *Report and Order* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Report and Order*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We discuss the following proposals:

A. MM Docket No. 01-33; RM-10060

Petitioner: Edwards Communications, L.C.

¹ See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

Federal Communications Commission

DA 01-1153

**C/O John S. Neely
Miller and Miller, P.C.
P. O. Box 33003
Washington, DC 20033**

Determination: Substitute Channel 221C3 for Channel 221A at Caro, Michigan, reallocate Channel 221C3 from Caro to Cass City, Michigan, as the community's first local transmission service, and modify Station WIDL's authorization to specify Cass City as the community of license.

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 June 18, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel</u>
Cass City, Michigan	221C3

Coordinates: 48-38-20 NL and 83-08-38 WL

Additional Information: Channel 221C3 can be substituted for Channel 221A at Caro, Michigan, and reallocated from Caro to Cass City at petitioner's requested site 4.9 kilometers (3.0 miles) northeast of the community. Our engineering analysis shows that there is a gain area with a population of 37, 994 persons. Our analysis also shows that all of the loss area is well served, and the gain area includes areas that will receive a third, fourth, and fifth service. In addition, Caro will continue to receive local transmission service from Station WKYO(AM). No urbanized areas are involved. Canadian concurrence has been received for this allotment.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

B. MM Docket No. 01-34; RM-10061

**Petitioner: D&H Media
C/O Howard J. Barr
Pepper and Corazzini, LLP
1776 K Street, N.W. Suite 200
Washington, DC 20006-2334**

Determination: Reallocate Channel 253A from Warsaw to Windsor, Missouri, as the community's first local transmission service, and modify Station KWKJ's authorization to specify Windsor as the community of license.

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 June 18, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel</u>
Windsor, Missouri	253A

Federal Communications CommissionDA 01-1153

Coordinates: 38-31-56 NL and 93-31-19 WL

Additional Information: Channel 253A is reallocated from Warsaw to Windsor, Missouri, without a site restriction. Warsaw will continue to receive local transmission service from Station KAYQ(FM). No urbanized areas are involved. We agree that the change of community will serve the public interest. In response to the *Notice*, petitioner states that the change of community will result in a preferential arrangement of allotments. It will provide a first local aural transmission service to the community. It also states that the net gain in service to 21,439 persons outweighs the loss of a service to 7,841 persons. Our analysis also shows that from petitioner's site, the loss area includes no white or gray area. We also note that the gain area includes an area with a population of 3,873 persons who will receive a fourth reception service.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Station WIDL(FM), IS MODIFIED to specify operation on Channel 221C3 at Cass City Michigan and the authorization of Station KWKJ(FM) IS MODIFIED to specify operation on Channel 253A at Windsor, Missouri, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Edwards Communications, L.C., licensee of Station WIDL(FM) Caro, Michigan, and D&H Media, permittee of Station KWKJ(FM), Warsaw, Missouri, are each required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

6. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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

To: jkarouso@fcc.gov
Subject: URGENT
Bcc: kshirley@fcc.gov

Dear John A. Karousos, the Commission recently granted a rulemaking filed by Edwards Communications to change WIDL from Caro to Cass City, however I timely filed a Counter-Proposal on 4/2/01 which asked that 297C3 be substituted for 221C3. I have reviewed the situation and believe that the Commission has erroneously granted Edward Communication's proposal because it makes no mention of my counterproposal. I respectfully request that Commission reverse their decision, on it's own motion, in light of the fact it appears the counterproposal was never considered. I've FAXED an FCC STAMPED copy of my counterproposal to 202 418 1410. I will try to call later today regarding this matter unless I hear back from via email or phone. Thank you,

**-Ed Czelada
810 724 2638
automate@cardina.net**

Edward Czelada
3302 N. Van Dyke
Imlay City, MI 48444
(810) 724 2638

April 2, 2001

Cover Letter

Dear Magalie Roman Salas, following is an original and four copies of a Counter Proposal directed at Edwards Communications (MM Docket No. 01-33: RM-10060) for a proposal to reallocate 221C3 to Cass City, MI.

Sincerely,

Edward Czelada 4-2-01

Edward Czelada
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Imlay City, MI 48444
(810) 724 2638

RECEIVED

APR 2 2001

EDWARDS COMMUNICATIONS COMPANY
OFFICE OF THE SECRETARY

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

In the Matter of

Amendment of Section 73.202(b),)
FM Table of Allotments,)
FM Broadcast Stations.)
)
(Caro and Cass City, Michigan')
)
MM Docket No. 01-33)
RM-10060)

COUNTER PROPOSAL

Comment Date: April 2, 2001

Reply Comment Date: April 17, 2001

Background

1. Before the Allocations Branch for consideration is a proposal to amend the FM Table of Allotments, Section 73.202(b) The proposal involves a change of community of license that would provide a first local transmission service at the proposed community. The petitioner, Edwards Communications, L.C., licensee of Station WIDL(FM) Caro, Michigan.

Petitioner: Edwards Communications, L.C.
C/O John S. Neely
Miller and Miller, P.C.
P. O. Box 33003
Washington, DC 20033
MM Docket No. 01-33; RM-10060

Counter Proposal

Edward Czelada hereby counter proposes channel 297C3 for Cass City instead of Channel 221C3 and additionally proposes to allocate Channel 218C3 to Ubyly, MI as it's first non-commercial service. Reallocate Caro to Cass City, Michigan, as the community's first local transmission service, and modify Station WIDL's authorization to specify Cass City as the community of license. Petitioner will apply for channel 218C3 in Ubyly when the non-commercial freeze is lifted.

Community	Present	Proposed
Caro, Michigan	221A	---
Cass City, Michigan	---	297C3
Ubyly, Michigan	---	218C3*

Coordinates for both proposals: 43-39-25 NI. and 82-54-15 WL

Additional information: Channel 297C3 can be substituted for Channel 221A at Caro, Michigan, and reallocated from Caro to Cass City at site 23 kilometers northeast of Cass City. By using 297C3 instead of 221C3 at Cass City an additional non-commercial allocation can be added to this area. Canadian concurrence will be required for these allotments. Channel 218C3 will be limited allocation.

BY: Edward Czelada 4-2-01

Edward Czelada
3302 N. Van Dyke
Imlay City, MI 48444
(810) 724 2638

CERTIFICATE OF SERVICE

I certify that on this 2th day of April 2001, I caused a copy of the foregoing "Counter Proposal" to be mailed via first class postage prepaid mail to the following:

Edwards Communications, L.C.
C/O John S. Neely
Miller and Miller, P.C.
P. O. Box 33003
Washington, DC 20033

Edward Czclada 4-2-01
Edward Czclada

Federal Communications Commission

**Before the
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(Caro and Cass City, Michigan))	MM Docket No. 01-33
)	RM-10060
)	
(Warsaw and Windsor, Missouri))	MM Docket No. 01-34
)	RM-10061

ERRATUM

Released: May 11, 2001

By the Chief, Allocations Branch:

1. On May 4, 2001, the Allocations Branch released a *Report and Order* granting allotments in the above-captioned communities. The last sentence of the first paragraph inadvertently omitted footnote one which should read as follows:

We received no other comments or counterproposals.¹

FEDERAL COMMUNICATIONS COMMISSION

¹ We note that a pleading styled "counterproposal" was filed by Edward Czelada requesting that we allot Channel 297C3 at Cass City rather than Channel 221C3 and the allotment of Channel 218 C3 at Ubly, Michigan so that he can apply for Channel 218C3 at Ubly, Michigan once the freeze on the filing of applications in the reserved band is lifted. We are not considering this pleading in this proceeding because it was defective when filed. See *Report and Order* in MM Docket No. 98-29 (Indio and Indian Wells, California), 15 FCC Rod 23,845 (2000). First, we cannot make allotments in the FM reserved band, as those channels are properly requested by application, and there is no exception to this rule when there is a freeze on the filing of new applications for that band. See 47 CFR §§73.501 and 73.509; see also *Second Report and Order* in Docket No. 20735, 44 RR2d 235 (1978) (Commission considered but did not adopt, a table of allotments for the FM noncommercial band, but rather retained its current practice of requiring FM stations in the reserved band to be chosen by applications judged strictly on their own engineering terms, using an interference standard). Secondly, the pleading did not include an engineering study, and our own engineering analysis shows that pursuant to the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules, Channel 297C3 cannot be allotted at Cass City.