

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D. C. 20554

**ORIGINAL  
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In re Application of )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations )  
(Detroit Lakes and Barnesville, )  
Minnesota; Enderlin, North Dakota) )

MM Docket No. 00-53 /  
RM-9823

FEB - 6 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

**PETITION FOR RECONSIDERATION**

Enderlin Broadcasting Company ("EBC") herein seeks reconsideration of the *Report and Order* ("R&O") in the above-captioned proceeding. A summary of the R&O was published in the Federal Register on January 8, 2002 (67 Fed. Reg. 829). This Petition for Reconsideration is being filed within 30 days after that publication and, accordingly, is timely. See 47 C.F.R. §§ 1.4(b)(1), 1.429(d). In support of this petition, the following is stated:

**I. BACKGROUND**

T&J Broadcasting, Inc. ("T&J"), the then-licensee of Station KRVI(FM), Detroit Lakes, Minnesota ("KRVI"), filed a rulemaking petition on January 13, 2000, to amend the FM Table of Allotments to reallocate Channel 236C1 from Detroit Lakes, Minnesota to Barnesville, Minnesota and modify the KRVI license accordingly.<sup>1</sup> A Notice of Proposed Rulemaking ("NPRM") was

<sup>1</sup> Station KRVI has since been assigned, first to Clear Channel Broadcasting Licenses, Inc. and then to the current licensee, Capstar TX Limited Partnership ("Capstar").

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released March 24, 2000 (DA 00-645). In response to the *NPRM*, EBC filed a counterproposal proposing allotment of Channel 233C1 to Enderlin, North Dakota as that community's first local service.<sup>2</sup> EBC urged that its proposal should be adopted for three reasons:

1. The proposed allotment would bring a first local service to Enderlin, a community well outside the Fargo, North Dakota – Moorhead, Minnesota Urbanized Area, while T&J's proposal for modification of KRVI would bring another signal to the core of the already well-served Fargo-Moorhead market.
2. The Enderlin allotment proposal would result in bringing a new primary service to 182,766 persons, while the KRVI proposal would result in a net loss of 32,674 persons served.<sup>3</sup>
3. KRVI's operating frequency, Channel 236C1, can be reallocated to Barnesville using the current KRVI transmitter site coordinates as the reference point, thus permitting reallocation of Channel 236C1 to Barnesville *and* allotment of Channel 233C1 to Enderlin.

Triad Broadcasting Co., L.L.C. ("Triad") filed lengthy comments in opposition to T&J's proposal, arguing that Barnesville was not sufficiently independent of the Fargo-Moorhead Urbanized Area to result in T&J gaining a "first local service preference" for proposing Barnesville as KRVI's community of license.

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<sup>2</sup> EBC specified a special reference point for the proposed Enderlin allotment: NL 46-25-00; WL 97-15-00.

<sup>3</sup> See EBC's Comments and Counterproposal, Exhibit 2 (filed May 15, 2000).

All parties filed reply comments.<sup>4</sup>

In the *R&O*, the Allocations Branch concluded that Barnesville was sufficiently independent of the Fargo-Moorhead Urbanized Area to deem an allotment to Barnesville to be a first local service. On the basis of that conclusion, the Allocations Branch chose Barnesville over Enderlin because Barnesville has a larger population (2,173 persons compared to 947 persons, respectively, as of the 2000 Census).

## II. DISCUSSION

The *R&O* makes no mention of the fact that Channel 236C1 can be allotted to Barnesville and Channel 233C1 can be allotted to Enderlin *if* another reference point were used for the Barnesville allotment (*i.e.*, KRVI's existing transmitter site). The failure of the *R&O* to discuss this important point has led to the filing of this Petition for Reconsideration.

KRVI, from its current transmitter site, provides a city-grade signal over all Barnesville. Indeed, the current KRVI site is closer to Barnesville than the reference point proposed in T&J's rulemaking petition (14.877 kilometers versus 32.367 kilometers). *See* EBC's Comments and Counterproposal, Exhibits 3 & 4.

The fact a rulemaking proponent may prefer a particular reference point does not preclude the Commission from using a different reference point in order to adopt an allotment proposal that will better serve the public interest. *E.g.*, *Rangley, Silverton and Ridgway, Colorado*, DA 01-738,

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<sup>4</sup> T&J, in its reply comments, proposed allotment of Channel 256C1, rather than Channel 233C1, at Enderlin. That allotment proposal, however, would have also required substitution of Channel 296C1 for Channel 256C1 at Gackle, North Dakota. The *R&O* rejected this proposal because it impermissibly introduced a new community into the proceeding after the initial comment period. *R&O*, ¶ 10, citing *Corpus Christi and Three Rivers, Texas*, 11 FCC Rcd (1996). EBC does not challenge this aspect of the *R&O*.

¶ 6 (Chief, Allocations Branch, March 23, 2001) (conflict between two allotment proposals may be resolved by adopting a reference point other than that requested by petitioner, thereby allowing adoption of both proposals); *Sister Bay, Wisconsin and Escanaba, Michigan*, 15 FCC Rcd 22455 ¶ 4 (Chief, Allocations Branch, 2000) (same)<sup>5</sup>; *accord, e.g., Elkins, West Virginia*, 7 FCC Rcd 5527, 5530 (¶ 17) (Chief, Policy & Rules Division 1992) (a rulemaking proponent's site preference will not override a distinctly superior allotment plan), *rev. denied*, 10 FCC Rcd 10433 (1995); *Fair Bluff, North Carolina*, 11 FCC Rcd 12662 (1996) (a reference point other than petitioner proposed may be adopted to facilitate upgrade of another station); *Topsail Beach, North Carolina*, 3 FCC Rcd 959 (Chief, Policy and Rules Div. 1988) (same).

Here, use of different reference coordinates for the proposed Barnesville allotment will give Enderlin its first local radio station and will provide a new radio service to more than 182,000 persons.<sup>6</sup> That result clearly better serves the public interest than the net loss of population served that TJ's proposal entails. *See R & O* at ¶ 10.

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<sup>5</sup> Both *Rangley* and *Sister Bay* were decided after EBC's Reply Comments were filed in this proceeding.

<sup>6</sup> Furthermore, the proposed Enderlin station would provide service to a significant area and population that currently have fewer than five aural services:

<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	333.9	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

Triad's Reply Comments, Engineering Statement at Table 1.0.

While T&J stated in passing that it was being forced off of its present tower, no showing was made that the area in the vicinity of that tower would be unsuitable. It is well established that where an existing station advances a rulemaking proposal involving a change in the station's transmitter site, the Commission may impose a different site restriction than the petitioner presented. *E.g.*, *Greenville, Texas*, 6 FCC Rcd 6048 (1991) (cited in *Rangley, Colorado, supra* and *Sister Bay, Wisconsin, supra*, among many other cases). Thus, notwithstanding KRVI's request to specify reference coordinates nearer to Fargo and Moorhead, the Commission can and should specify the station's current location when, as in this case, doing so would better serve the public interest.

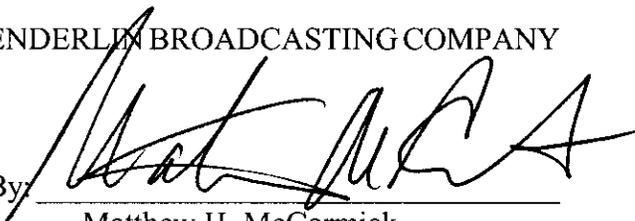
EBC recognizes that the Petition for Reconsideration should not be used as a vehicle to reargue points fully analyzed and decided previously. Here, the *R&O* simply does not address the fact that selection of the different reference point for the Barnesville allotment would allow adoption of the Enderlin allotment as well. EBC respectfully requests that on reconsideration this solution be considered and adopted.

### **III. RELIEF REQUESTED**

WHEREFORE, in light of all circumstances present, this Petition for Reconsideration should be GRANTED, that the reference coordinate for the allotment of Channel 236C1 at Barnesville,

Minnesota, should be changed to NL 46-40-27, WL 96-13-39 and that Channel 233C1 should be allotted at Enderlin, North Dakota with reference coordinates of NL 46-25-00, WL 97-15-00.

ENDERLIN BROADCASTING COMPANY

By 

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February 6, 2002

**CERTIFICATE OF SERVICE**

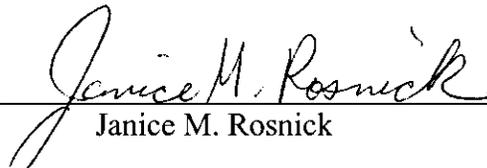
I, Janice M. Rosnick, hereby certify that on this 6<sup>th</sup> day of February, 2002, copies of the foregoing PETITION FOR RECONSIDERATION were hand delivered or mailed, first-class, postage prepaid, to the following:

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