

Federal Communications Commission

DA 02-1156

MAY 21 2002

FCC-11-10011

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-69
Table of Allotments,)	RM-9850
FM Broadcast Stations.)	RM-9945
(Cheboygan, Rogers City, Bear Lake,)	RM-9946
Bellaire, Rapid River, Manistique,)	
Ludington, Walhalla and Onaway,)	
Michigan) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 1, 2002

Released: May 17, 2002

By the Assistant Chief, Audio Division:

1. In response to a petition filed by Escanaba License Corp. ("Escanaba"), the Commission has before it for consideration the Notice of Proposed Rule Making and Order to Show Cause, 15 FCC Rcd 10292 (2000), seeking the allotment of Channel 260C2 at Cheboygan, Michigan, and the substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan. D&B Broadcasting L.L.C. and Fort Bend Broadcasting Company filed a joint counterproposal. Northern Radio Network Corporation also filed a counterproposal.² Late-filed comments were received from Escanaba supporting its proposal for Cheboygan and Rogers City.³ Reply comments were filed by Todd Stuart Noordyk, Escanaba, MacDonald Garber Broadcasting, Inc., D&B Broadcasting L.L.C., Fort Bend Broadcasting Company, Northern Radio Network Corporation, and Lake Michigan Broadcasting.

2. The Notice proposed the allotment of Channel 260C2 at Cheboygan, Michigan, as a second local FM service. To accommodate the allotment of Channel 260C2 at Cheboygan, Escanaba requested the substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan, and modification of the license for Station WHAK accordingly. Escanaba stated its intention to reimburse the licensee of Station WHAK for the reasonable costs in changing frequency if the

¹ The communities of Bear Lake, Bellaire, Ludington, Manistique, Onaway, Rapid River and Walhalla, Michigan, have been added to the caption.

² The counterproposals were put on public notice on August 24, 2000, Report No. 22431 (RM-9945 and RM-9946).

³ The comments filed by Escanaba were received at the Commission on June 20, 2000, and are considered to be late-filed as initial comments. Comments were due on June 3, 2000.

requested allotments were made. An Order to Show Cause was issued to the licensee of Station WHAK, Rogers City, Michigan.

3. D&B Broadcasting L.L.C., licensee of Station WSRQ, Bear Lake, Michigan, along with Fort Bend Broadcasting Company ("Fort Bend"), assignee of Station WSRQ, filed the following counterproposal (RM-9945).⁴ Fort Bend submitted a proposal that will retain the original request to substitute Channel 292C2 for Channel 260C2 at Rogers City, pledging to reimburse the licensee of Station WHAK for expenses involved in changing frequencies. In addition, Fort Bend requested the substitution of Channel 260C1 for Channel 261A at Bear Lake and reallocation of Channel 260C1 from Bear Lake to Bellaire, Michigan, providing a first local service for the community. Fort Bend further requested the allotment of Channel 291A at Bear Lake to provide continuing local service as the reallocation of Station WSRQ from Bear Lake to Bellaire removes the sole local service from the community. Fort Bend points out that not only will the reallocation provide a first local service for Bellaire, but the allotment of Channel 291A at Bear Lake will replace a short-spaced three kilowatt channel with a six kilowatt fully-spaced channel. Further changes were requested at Manistique, Ludington, and Walhalla, Michigan. At Manistique, Channel 265A is requested as a substitution for Channel 260A. Channel 260A is currently vacant with one application pending for the use of that channel (BPH-9700925MG). Here, Fort Bend states that it does not believe it is responsible for reimbursement to an applicant but should the Commission determine otherwise, it would honor that decision. At Ludington, Michigan, Channel 292A is presently occupied by Station WKLA for which the substitution of Channel 254A is requested and a reimbursement pledge has been made for that substitution. At Walhalla, Michigan, it is requested that Channel 293A be substituted for vacant and unapplied for Channel 255A. Fort Bend also requests the allotment of Channel 259A at Rapid River, Michigan, as a first local service. According to Fort Bend, the 1990 U.S. Census shows Rapid River, located in Delta County, with a population of 746 people. Fort Bend provided information showing community status for Bellaire.⁵ Additionally, Fort Bend states that it will file applications for Channel 260C1 at Bellaire and Channel 259A at Rapid River.

4. Northern Radio Network Corporation ("NRN"), licensee of Station WHAK, Rogers City,

⁴ The assignment of license for Station WSRQ, Bear Lake, from D&B to Fort Bend Broadcasting Company was granted on September 27, 2000 (BALH-20000717AAU). FCC Public Notice Report No. 44831, issued October 2, 2000. The sale and assignment closed on December 4, 2000, leaving Fort Bend Broadcasting Company as the sole licensee of Station WSRQ, Bear Lake.

⁵ Petitioners provided the following information supporting community status. The community of Bellaire was established in 1879, is a self-governing community with a village manager appointed by an elected village council. Bellaire has its own post office and local school system. The community is served by several churches including Bellaire United Methodist Church, Hope Lutheran of Bellaire and St. Luke's Catholic Church. Bellaire has numerous businesses in the downtown area, its own airport, the Antrim County Airport, and its own newspaper, the Antrim County News. Bellaire is the County Seat for Antrim County, has several parks, county offices, and several civic organizations.

Michigan, objects to changing its channel from 260C2 to Channel 292C2, as requested by Escanaba. NRN argues that the proposed channel change would substantially disrupt station operations, cause confusion to the listening audience and result in significant costs that NRN would initially have to cover. NRN states that it realizes that the ultimate permittee of Channel 260C2, Cheboygan, would be responsible for reimbursement for the usual costs associated with changing frequencies. To avoid changing channels, NRN filed a counterproposal requesting the allotment of alternate Channel 249C3 at Cheboygan which does not conflict with Station WHAK, Rogers City. NRN also requested the allotment of Channel 292C2 at Onaway, Michigan, which is in conflict with the proposed allotment of Channel 292C2 at Rogers City. NRN states that both channels can be allotted in compliance with the Commission's spacing rules, providing the required city grade coverage to each community. In support of an allotment at Onaway, NRN states that the allotment will provide a first local service to the community. Further, Onaway was incorporated as a community in 1899, has a 1990 population of 1,039 people, council-manager form of government, with its own parks, court house, water system and police department. Onaway has been designated by the Michigan State Legislature as "the Sturgeon Capital of Michigan." The community is supported by several small manufacturing facilities and tourism. NRN points out that Escanaba's proposal to add a second FM frequency to Cheboygan would serve priority four, other public interest matters, while its proposal to allot a channel to Onaway would serve priority three, first local service. NRN believes that its counterproposal is superior to the original proposal as the allotment of a class C3 channel rather than a class C2 channel at Cheboygan would provide the community with an additional FM service while no disruption would be experienced by the residents of Rogers City and the community of Onaway would be provided with a first local service. NRN stated its intention to file an application for Channel 249C3 at Cheboygan and Channel 292C2 at Onaway.

5. The following parties filed reply comments in this proceeding. Escanaba continues to support an allotment at Cheboygan and substitution at Rogers City. Escanaba points out that it has committed to payment or reimbursement of costs to Station WHAK, Rogers City, in connection with the frequency change in response to NRN's concerns. Further, Escanaba contends that the frequency substitution should not cause significant disruption in station operations because of the advance promotion of the new frequency. Escanaba also states that in the event the Commission denies its proposal and allots Channel 249C3 to Cheboygan and Channel 292C2 at Onaway, Michigan, as requested by NRN, it intends to file applications for each of those channels at such time as filing is permitted. Todd Stuart Noordyk ("Noordyk"), permittee for Channel 260A at Manistique, Michigan, by virtue of Broadcast Auction No. 25, neither supports nor opposes Fort Bend's counterproposal.⁶ Noordyk states however, that he would prefer the substitution of Channel 241A or Channel 234A for Channel 260A at Manistique, not the substitution of Channel 265A as has been proposed. MacDonald Garber Broadcasting, Inc. ("MGBI") is the licensee of Radio

⁶ In supplemental comments, Noordyk stated that he would prefer the substitution of Channel 234A for Channel 260A at Manistique which can be utilized at the application site for Channel 260A should it be necessary to change channels. During the reply comment period, Noordyk had requested that Channel 241A be substituted at Manistique but it has recently come to his attention that Channel 234A would be a better replacement channel.

Stations WMBN-AM and WLXT-FM, Petoskey, Michigan, Stations WMKT-AM and WKHQ-FM, Charlevoix, Michigan, and Stations WATT-AM and WLXV-FM, Cadillac, Michigan. MGBI questions the public interest merit to Fort Bend's proposal, essentially due to the fact that its Station WSRQ-FM, Bear Lake, has been silent almost 100% of the time during the past five years.⁷ MGBI submits that the Commission should fully investigate the current operation of Station WSRQ-FM before consideration is given to relocation and upgrade of the facility as it does not appear that the station is meeting its public interest obligations to the community of Bear Lake.

6. In its reply comments, Fort Bend contends that the comments filed by Escanaba are untimely and should be disregarded. Fort Bend argues that its counterproposal is superior to the original proposal, should a fact situation exist that would excuse the late filing by Escanaba. With respect to the counterproposal filed by NRN, Fort Bend argues that the counterproposal does not qualify as a counterproposal as the proposal is not in conflict with the proposal set forth in the Notice. Specifically, the proposal to allot Channel 249C3 to Cheboygan is eleven channels removed from the proposed allotment of Channel 260C2. NRN opposes Fort Bend's counterproposal stating that significant technical problems exist with respect to the proposed allotments at Bellaire, Bear Lake and Rapid River. According to NRN, the proposed site for Bellaire would not provide a line-of-site signal to the community, precluding the allotment of Channel 260C1 at Bellaire. NRN continues, stating that removal of a community's only local service is generally unacceptable and to remedy that situation, the allotment of Channel 291A at Bear Lake has been proposed. According to NRN, the site selected for Channel 291A is in the Bar Lake Swamp, lacking access roads and electrical power in the vicinity and that city grade coverage cannot be provided because of a line-of-site problem. These problems should preclude the allotment of Channel 291A at Bear Lake. To enhance its proposal, Fort Bend has proposed the allotment of Channel 259A at Rapid River, Michigan, as a first local service. NRN points out that the reference site for Rapid River provided in the counterproposal is located in the Hiawatha National Forest, which has few access roads or power lines. NRN argues that even if the technical deficiencies in Fort Bend's proposal are ignored, NRN's proposal should be favored. The choice is to provide a first local service to Bellaire and Rapid River, Michigan, and require five changes to the FM Table of Allotments or allot a first local service to Onaway, Michigan, and a second service to Cheboygan, Michigan, with no other changes to the FM Table of Allotments.

7. In order to proceed with our analysis in this proceeding, an Order to Show Cause was directed to Lake Michigan Broadcasting, Inc. ("LMB"), licensee of Station WKLA, Ludington,

⁷ A letter was sent to Fort Bend Broadcasting Co. on March 19, 2001, by the Chief, Audio Services Division, Mass Media Bureau, requesting information concerning the operational status of Station WSRQ. Counsel for Fort Bend responded on April 18, 2001, stating that Fort Bend Broadcasting Company became the licensee of Station WSRQ as of December 4, 2000, indicating that all necessary action has been taken to insure that Station WSRQ is in compliance with FCC Rules.

Michigan, to show cause why its license for Station WKLA should not be modified to specify operation on Channel 254A in lieu of Channel 292A (16 FCC Rcd 9548 (2001)). LMB objects to the proposed channel change at Ludington. LMB argues that the proposed substitution is not in the public interest, is disruptive and threatens the service that the station provides to the community. WKLA is a "full service" station and is concerned that if it were financially damaged by the forced modification of its frequency, some services may have to be discontinued. LMB is also concerned that the modification to Channel 254A would increase the likelihood of intermittent interference to the station due to the "lake effect" experienced in the area. LMB provided an engineering report showing that the substitution of Channel 254A would expose the station to the increased possibility of harmful interference from Channel 255A, Two Rivers, Wisconsin. LMB does not believe that Fort Bend's proposal serves the public as the sole local service will be removed from Bear Lake to provide a first local service at Bellaire with service to be replaced at Bear Lake by a vacant allotment. LMB does not believe that Fort Bend has made a sufficient showing to demonstrate that removal of the local service from Bear Lake is justified. LMB also believes that the proposed allotment of Channel 259A at Rapid Rivers is unsuitable because of the site location in the Hiawatha National Forest. LMB contends that the Commission should reject Fort Bend's counterproposal as it does not result in a preferential arrangement of allotments.

8. After a review of the comments filed in this proceeding, we believe that it is in the public interest to grant the counterproposal filed by Northern Radio Network Corporation. Therefore, we shall allot Channel 249C3 at Cheboygan, Michigan, as a second local service and Channel 292C2 at Onaway, Michigan, as a first local service. Although the initial comments filed by Escanaba License Corp. did support the allotment of a C2 channel at Cheboygan, they were late filed and have not been considered. No other interest was expressed for the allotment of a C2 channel at Cheboygan. In reply comments Escanaba stated its support for the allotment of Channel 249C3 at Cheboygan and Channel 292C2 at Onaway.

9. The counterproposal filed by Fort Bend involving Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, and Walhalla was initially accepted and put on public notice.⁸ Further analysis shows that the counterproposal is defective and will be denied. In order to provide continuing local service at Bear Lake, Fort Bend proposed the allotment of Channel 291A as a back-fill channel for the community. Based on a Quadrangle map for the area, our engineering analysis found that the proposed site for Channel 291A is located in the Bar Lake Swamp and has been determined to be an unusable site. It is our determination that Channel 291A cannot be allotted to Bear Lake as a back-fill channel as requested by Fort Bend to accommodate the reallocation of Channel 260C1 to Bellaire. Therefore, reallocation of Channel 260C1 to Bellaire

⁸ With respect to the requested allotment of Channel 259A at Rapid River, our staff has determined that there are no sites outside of the Hiawatha National Forest that would meet spacing requirements and provide city grade coverage to the community. And since Fort Bend neglected to make a showing that it had reasonable assurance for use of a site inside the National Forest, no consideration will be given to the allotment of Channel 259A at Rapid River. We point out that allotment of Channel 259A at Rapid River had no effect on the denial or acceptance of Fort Bend's counterproposal.

would remove the sole local service from Bear Lake. Pursuant to the FM allotment priorities the counterproposal would normally be favored because the allotment of Channel 260C1 at Bellaire would provide a first local transmission service under priority 3) to the larger community of Bellaire (population 1,164 people) than would occur by retaining the channel at Bear Lake (population 318 people).⁹ The Commission indicated in the Change of Community Order that under some very limited circumstances it would consider that the removal of a sole local service may be justified if there are compelling public interest factors to offset the expectation of continued service (such as a first local service to a significantly sized population).¹⁰ However, we do not find that situation is applicable here where both the existing and proposed arrangement of allotments trigger the same allotment priority. As stated in the Modification of License MO&O,

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another regardless of whether the service removed constitutes a transmission service, a reception service, or both.

Since our engineering analysis has determined that Channel 291A cannot be used as a back-fill channel at Bear Lake, we cannot find that the reallocation of Channel 260C1 from Bear Lake to Bellaire, Michigan, provides a public interest benefit of enough significance to outweigh the loss of the sole transmission service from Bear Lake or offset the disruption of an existing service.

10. Channel 249C3 can be allotted to Cheboygan, Michigan, in compliance with the Commission's spacing requirements at a site 19 kilometers (11.8 miles) southeast of the community.¹¹ Channel 292C2 can be allotted to Onaway, Michigan, in compliance with the Commission's spacing requirements at a site 19.1 kilometers (11.9 miles) northeast of the

⁹ 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).]

¹⁰ See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community Order"), 4 FCC Rcd 4870 (1989), recon. granted in part, ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

¹¹ The coordinates for Channel 249C3 at Cheboygan are 45-34-45 and 84-15-05. We do note that Channel 249C3 at Cheboygan conflicts with a counterproposal filed by Crystal Clear Communications, Inc on July 16, 2001, in MM Docket No. 01-115 to allot Channel 249C2 at Alpena, Michigan. See 16 FCC Rcd 11103 (2001). The counterproposal is considered untimely in this proceeding and will be resolved in the context of MM Docket No. 01-115.

community.¹² Since Cheboygan and Onaway are located within 320 kilometers of the U.S-Canadian border, concurrence of the Canadian Government has been obtained for these allotments.

11. 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 July 1, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Cheboygan, Michigan	249C3, 286C1
Onaway, Michigan	292C2

12. A filing window for Channel 249C3 at Cheboygan, Michigan and Channel 292C2 at Onaway, Michigan, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

13. IT IS FURTHER ORDERED, That the counterproposal filed by D&B Broadcasting L.L.C and Fort Bend Broadcasting Company (RM-9945) IS DENIED.

14. IT IS FURTHER ORDERED, That the petition filed by Escanaba License Corp (RM-9850) IS DISMISSED.

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

¹² The coordinates for Channel 292C2 at Onaway are 45-26-28 and 84-00-37.

16. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 249C3 at Cheboygan and Channel 292C2 at Onaway, Michigan, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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