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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-208
Table of Allotments,)	RM-10793
FM Broadcast Stations.)	
(Arthur and Hazelton, North Dakota))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 26, 2004

Released: May 28, 2004

By the Assistant Chief, Audio Division:

1. At the request of Vision Media Incorporated ("Petitioner"), licensee of Station KVMI(FM), Arthur, North Dakota, the Audio Division has before it a *Notice of Proposed Rule Making*¹ proposing the substitution of Channel 280C1 for Channel 280C3 at Arthur, North Dakota, and the modification of Station KVMI(FM)'s license accordingly. To accommodate the upgrade, petitioner also requested the substitution of 277C for vacant Channel 280C at Hazelton, North Dakota.² Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 280C1 at Arthur, North Dakota, because it would allow Station KVMI(FM) to expand its service area. We also substitute Channel 277C for vacant Channel 280C at Hazelton, North Dakota. An engineering analysis has determined that Channel 280C1 can be substituted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 48.5 kilometers (30.1 miles) northwest at Petitioner's requested site.³ Additionally, Channel 277C can be substituted for vacant

¹ *Arthur and Hazelton, North Dakota*, 18 FCC Rcd 19229 ((2003).

² Channel 280C at Hazelton was listed among other vacant nonreserved band FM allotment in Broadcast Auction No. 37, previously scheduled to commence on December 5, 2001. However, on July 3, 2001, the United States Court of Appeals for the District of Columbia Circuit In *National Public Radio, Inc. et al. v. FCC*, Nos. 00-1246, 00-1255 (decided July 3, 2001) ("NPR") vacated the portion of the Commission's Noncommercial Report and Order, 65 FR 36375 (June 8, 2000), that required noncommercial educational ("NCE") entities that applied for authorizations in the nonreserved spectrum to participate in auctions with mutually exclusive commercial applicants. As the vacant nonreserved FM band allotments included in Auction No. 37 are potentially impacted by NPR, the Commission postponed Auction No. 37 pending its response to the NPR decision. See *Public Notice*, DA 01-2148, released September 14, 2001, 66 FR 48467, September 20, 2001. Auction No. 37 has been rescheduled for November 3, 2004. See *Public Notice*, DA 04-1020, released April 15, 2004, 69 FR 26103, May 11, 2004.

Channel 280C at Hazelton with a site restriction of 51.6 kilometers (32.0 miles) west at the authorized allotment site.⁴ Since Arthur and Hazelton are located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested for both communities, but has not yet been received. If a construction permit is granted prior to the receipt of formal concurrence for the allotment of Channel 280C1 at Arthur or Channel 277C at Hazelton by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified therein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement." In accordance with Section 1.420(g)(3) of the Commission's Rules, we modify Station KVMI(FM)'s license to specify operation on Channel 280C1 in lieu of Channel 280C3 at Arthur, North Dakota.

3. Accordingly, pursuant to the authority found 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 12, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Arthur, North Dakota	280C1
Hazelton, North Dakota	277C

4 IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Vision Media Incorporated, Station KVMI(FM) Arthur, North Dakota, IS MODIFIED to specify operation on Channel 280C1 in lieu of Channel 280C3 at Arthur, North Dakota, 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), specifying the new facility.
- (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, unless the proposed facilities are categorically excluded from environmental processing.

³The coordinates for Channel 280C1 at Arthur are 47-19-35 North Latitude and 97-46-15 West Longitude.

⁴ The modified coordinates for Channel 277C at Hazelton are 46-22-06 North Latitude and 100-55-49 West Longitude.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), 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, Vision Media Incorporated, licensee of Station KVMI(FM), is required to submit a rule making fee in addition to the fee required for the application for the upgrade at Arthur, North Dakota.

6. A filing window for Channel 277C at Hazelton, North Dakota, will not be opened at this time. Instead, Channel 277C will be substituted for Channel 280C (FM197) at Hazelton on Auction No. 37, rescheduled for November 3, 2004.

7. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Vision Media Incorporated
200 West Eighth Street
West Fargo, North Dakota 58078
(Licensee of Station KVMI(FM))

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

9. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau