

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Caseville and Pigeon, Michigan))	MM Docket No. <u>01-229</u>
)	RM-10257
)	RM-11285
)	RM-11291
)	
(Harbor Beach and Lexington, Michigan))	MM Docket No. 01-231
)	RM-10259
)	RM-11285

REPORT AND ORDER
(Proceedings Terminated)

Adopted: December 14, 2005

Released: December 16, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notices of Proposed Rule Making* in the above-captioned proceedings, setting forth two separate proposals to allot an FM channel to a specific community.¹ In the first proceeding, the allotment of Channel 289A at Caseville, Michigan, was proposed in response to a petition for rule making submitted by Charles Crawford (“Crawford”). In the second proceeding, the allotment of Channel 256A at Harbor Beach, Michigan, was proposed, also in response to a petition for rule making submitted by Crawford.

2. Crawford filed comments in both proceedings, restating his interest in the proposed allotment. In addition, counterproposals are pending in both proceedings. A counterproposal was filed by Edward Czelada (“Czelada”) in MM Docket Nos. 01-229 and 01-231, as well as in a number of other proceedings for allotments in the same vicinity.² As to MM Docket Nos. 01-229 and 01-231, Czelada proposes the

¹ See *Hartshorne, Oklahoma, Mooreland, Oklahoma, Reydon, Oklahoma, Junction, Texas, Caseville, Michigan, Deckerville, Michigan, Harbor Beach, Michigan, Port Sanilac, Michigan, Alton, Missouri, and Firth, Nebraska*, 16 FCC Rcd 16,341 (MM 2001).

² See *Bad Axe, Michigan*, 18 FCC Rcd 2396 (MB 2003) (order terminating MM Docket No. 01-257); *Deckerville, Michigan*, DA 05-2916 (MB 2005) (rel. Nov. 4, 2005) (order terminating MM Docket No. 01-230); and *Port Sanilac, Michigan*, DA 05-2934 (MB 2005) (rel. Nov. 7, 2005) (order terminating MM Docket No. 01-232).

allotment of Channel 267A at Caseville in lieu of Channel 289A, and the allotment of Channel 256A at Lexington, Michigan, in lieu of the allotment of that channel at Harbor Beach, Michigan. Czelada further proposes the allotment of Channel 289A at Harbor Beach in lieu of Channel 256A. In addition, a petition submitted by Katherine Pyeatt ("Pyeatt") proposes the allotment of Channel 267A at Pigeon, Michigan, as a first local service. That allotment proposal is mutually exclusive with Czelada's counterproposal to allot Channel 267A at Caseville, Michigan, and the proposal was submitted within the comment period for MM Docket No. 01-229. For those reasons, we shall consider Pyeatt's proposal for the allotment of Channel 267A at Pigeon, Michigan, as a counterproposal in MM Docket No. 01-229.

3. Subsequent to the submission of Czelada's counterproposal in these proceedings and Pyeatt's petition for rule making, Crawford filed motions in MM Docket Nos. 01-229 and 01-231, seeking to dismiss his petitions for rule making. Crawford states that no consideration has been paid or promised, directly or indirectly, for such withdrawal.³ It is the Commission's policy to refrain from making an allotment to a community absent an adequate expression of interest. By filing his "Motion to Dismiss Petition," Crawford has demonstrated that he has no continuing interest in the requested allotments, so we shall not consider the allotment of Channel 289A at Caseville, Michigan, nor the allotment of Channel 256A at Harbor Beach, Michigan. We are left, however, to consider the counterproposals of Czelada and Pyeatt.

4. In her petition for rule making, Pyeatt states that if Channel 267A is allotted at Pigeon, Michigan, as a first local service, she will apply for and construct facilities to provide service using that allotment. In his counterproposal, Czelada states his intention to apply for and build facilities for Channel 256A at Lexington, Michigan, but he does not express that intention with respect to Channel 267A at Caseville nor Channel 289A at Harbor Beach. We therefore will not consider the Caseville and Harbor Beach proposals.

5. Both Pigeon, Michigan, an incorporated village with a population of 1,207 persons, and Lexington, Michigan, an incorporated village with a population of 1,104 persons, are communities for allotment purposes. Pigeon is deserving of a first local aural transmission service, and Lexington is deserving of a second local aural transmission service. In MM Docket No. 01-229, Channel 267A can be allotted to Pigeon in compliance with the *minimum distance separation* requirements of the Commission's Rules with a site restriction of 9.9 kilometers (6.2 miles) east of Pigeon at the following reference coordinates: 43-51-44 NL and 83-09-17 WL. Concurrence in this allotment is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not been received. If a construction permit for Channel 267A at Pigeon, Michigan, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: "Operation with the facilities specified herein for Pigeon, Michigan, 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 Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada."

³ See 47 C.F.R. § 1.420(j).

6. In MM Docket No. 01-231, Channel 256A can be allotted to Lexington in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 11.9 kilometers (7.4 miles) north of Lexington at the following reference coordinates: 43-22-30 NL and 82-32-04 WL. The Canadian government has concurred in the proposed allotment of Channel 256A at Lexington, which is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(a)(A).

8. 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 January 30, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Lexington, Michigan	245A, 256A
Pigeon, Michigan	267A

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

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel
1050 17th Street, N.W. – Suite 600
Washington, D.C. 20036
(Counsel for Charles Crawford)

Edward T. Czelada
3302 N. Van Dyke
Imlay City, Michigan 48444

Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214

10. A filing window for these allotments 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.

11. IT IS FURTHER ORDERED, that all other proposals pending in these proceedings ARE DISMISSED for the reasons stated herein.

12. IT IS FURTHER ORDERED, That these proceedings ARE TERMINATED.

13. For further information concerning these proceedings, contact Deborah A. Dupont at (202) 418-7072. Questions related to the application filing process for channels allotted in these proceedings should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau