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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 06-83
FM Broadcast Stations.	)	RM-11325
(Vernon Center and Eagle Lake,	)	
Minnesota)	)	
	)	
	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 20, 2006 **Released: December 22, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*[1] issued in response to a rulemaking petition filed by Radioactive, LLC ("Petitioner"), the holder, pursuant to the winning bid in Auction No. 37, of a construction permit for an unbuilt FM station on Channel 231A, Vernon Center, Minnesota; and (2) supporting comments filed by the Petitioner. For the reasons discussed below, we grant the Petitioner's rulemaking petition.

2. **Background.** At the request of the Petitioner, the *NPRM* proposed the reallotment and modification of its construction permit from Channel 231A at Vernon Center (pop. 359) to Channel 231A at Eagle Lake, Minnesota (pop. 1,787), pursuant to Section 1.420(i) of the Commission's rules.[2] Because the principal community (70 dBu) contour of the reallotted station appeared to encompass a majority of the Mankato, Minnesota, Urbanized Area, the *NPRM* requested that the Petitioner submit a *Tuck* showing[3] to demonstrate that Eagle Lake is sufficiently independent of the Mankato, Minnesota, Urbanized Area to warrant a first local service.

3. In its comments, the Petitioner disagrees that a *Tuck* showing is relevant to this proceeding because Mankato is not an Urbanized Area as defined by the U.S. Census Bureau. On the contrary, the Petitioner states that Mankato is an Urbanized Cluster, which is a densely settled territory that has at least 2,500 people but fewer than 50,000 people. Nevertheless, the Petitioner did submit a showing to demonstrate that the proposed allotment of Channel 231A to Eagle Lake, Minnesota, passes the *Tuck* factors. The Petitioner also reaffirmed that it would apply for the allotment and, if granted, would promptly construct and operate such facilities.

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[1] *Vernon Center and Eagle Lake, MN,* Notice of Proposed Rule Making, 21 FCC Rcd 3940 (MB 2006) ("*NPRM*").

[2] This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

[3] *See Faye and Richard Tuck, Inc.,* Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"). The purpose of a *Tuck* showing is to determine whether the proposed community of license is sufficiently independent of the nearby Urbanized Area to warrant a first local service under Priority (3) of the FM Allotment Priorities. *See, e.g., Mount Pleasant and Hemlock, MI,* Memorandum Opinion and Order, 20 FCC Rcd 17165 (MB 2005).

4. **Discussion.** As a threshold matter, we agree that the Petitioner has documented that Mankato, Minnesota, is an Urbanized Cluster, not an Urbanized Area. Because the threshold for a *Tuck* showing – predicted coverage by the allotment's 70 dBu contour over a majority of an Urbanized Area – is not met here, it was not necessary to require the submission of a *Tuck* showing. We have, nevertheless, reviewed the Petitioner's *Tuck* showing and find that majority of the eight factors demonstrate that Eagle Lake is independent from Mankato.[4]

5. We will grant the Petitioner's rulemaking petition because it satisfies our rules and policies on change of community of license. First, the Petitioner's construction permit for Channel 231A at Vernon Center and the proposed allotment of Channel 231A at Eagle Lake are mutually exclusive with each other. Second, because the Vernon Center station is unbuilt, its reallotment would not constitute the removal of the community's sole local service and the loss of service does not present the same concerns as if it were an operating station.[5] Third, the proposal will result in a preferential arrangement of allotments under the FM Allotment Priorities.[6] Although the retention of Channel 231A at Vernon Center or the reallotment of Channel 231A to Eagle Lake are both first local services under Priority (3), the reallotment is favored because the population of Eagle Lake is greater than that of Vernon Center.[7]

6. Eagle Lake is a community for allotment purposes because it is incorporated and listed in the U.S. Census. The Petitioner also sets forth various indicia of community status. Eagle Lake has its own mayor and city council, employs a city administrator and deputy clerk, provides its residents with public services such as water and sewer, and has its own police department and volunteer fire department.

7. Channel 231A can be reallotted to Eagle Lake at a site 5.6 kilometers (3.5 miles) northwest of the community in compliance with the Commission's minimum distance mileage separations.[8] The reference coordinates for this allotment are 44-12-29 NL and 93-55-00 WL.

8. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, IT IS ORDERED, That effective February 5, 2007, the Media Bureau's Consolidated Data Base System will reflect Channel 231A at Eagle Lake, Minnesota as the reserved assignment for this unbuilt FM station in lieu of Vernon Center, Minnesota.

9. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the construction permit for Channel 231A at Vernon Center is modified to specify operation on Channel 231A at Eagle Lake, subject to the following conditions:

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[4] Factors 3 (community leaders and residents perceive the specified community as being separate from the larger metropolitan area), 4 (local government and elected officials), 5 (zip code), 6 (local commercial establishments, healthy facility, and transportation systems), and 8 (local community provides various municipal services such as police, fire protection, schools, and libraries) are present.

[5] *See, e.g., Sanibel and San Carolos Park, FL,* Report and Order, 10 FCC Rcd 7215 (MMB 1995); and *Oraibi and Leupp, AZ,* Report and Order, 14 FCC Rcd 13547 (MMB 1999).

[6] 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)]. *See Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88, 91 (1988).

[7] *See, e.g., Ardmore, AL,* Report and Order, 17 FCC Rcd 16332, 16334-35 (MB 2002); *Three Oaks and Bridgman, MI,* Report and Order, 5 FCC Rcd 1004 (MMB 1990); and *Blanchard, LA, and Stephens, AR,* Memorandum Opinion and Order, 10 FCC Rcd 9828, 9829 (1995) (small population difference between communities is dispositive in comparing mutually exclusive proposals for first local services). A staff engineering analysis reveals that neither the existing nor the proposed arrangement of allotments would trigger Priorities (1) or (2).

[8] 47 C.F.R. § 73.207.

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

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;

(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.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, Radioactive, LLC, permittee of unbuilt FM station, Vernon Center, Minnesota, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for unbuilt FM station to specify operation on Channel 231A at Eagle Lake, Minnesota, at the time its Form 301 application is submitted.

11. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

12. IT IS FURTHER ORDERED, That the petition for rule making filed by Radioactive LLC IS GRANTED.

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

14. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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