

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Report and Order re:) RM-____
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Evert and Ludington, Michigan))
)
)
)
To: The Commission, Office of the Secretary)
Attn: Audio Division, Media Bureau)

FILED/ACCEPTED

JUN 27 2013

Federal Communications Commission
Office of the Secretary

Petition for Rulemaking

Synergy Lakeshore Licenses, LLC (“Synergy”), licensee of Station WMLQ(FM) Manistee, Michigan, by its counsel, hereby Petitions for a Rulemaking proceeding to undo the change in allotments ordered by the Report and Order adopted on February 25, 2009 (MB Docket No. 08-26, RM 11418) (the “Order”). As set forth in more detail below, that request was initiated by a petitioner who sought a new channel at Evert, Michigan. In doing so, he agreed to reimburse the licensees of two stations (one being WMLQ) for their costs in changing channels to accommodate the new channel at Evert, Michigan. The WMLQ channel change was required as the Evert allocation also required the change in the channel of a new vacant allotment at Ludington, which at the time had not yet been subject to auction.

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While the Commission imposed the costs of the channel change for WMLQ on the Evert applicant, the Evert applicant never bothered to bid on the channel in the recent Auction 94, and the channel went unsold. Thus, at this point, Synergy is required to change the channel of WMLQ to allow for the new Ludington channel to be used. But there is no one with any responsibility to reimburse Synergy for the cost of that change. This is contrary to Commission policy, and can be undone by the deletion of the unused channel at Evert which no one sought in the last auction, and a return of the Ludington allotment to its original channel, so that Synergy is not required to involuntarily change channels without compensation.

Background

Roy E. Henderson (“Petitioner”) filed a Petition for Rule Making to amend the FM Table Allotments, to allot Channel 274A at Evert, Michigan as a first local service. Petitioner’s request was granted pursuant to the Order, resulting in amendments to the Table of Allotments to allot Channel 274A to Evert, Michigan Channel 249A to and Ludington, Michigan. To make room for the new channel at Ludington, the Order also required Synergy to make a channel substitution, changing WMLQ at Manistee from Channel 249A Channel to Channel 282A. The sole responsibility for the reimbursement of Synergy for the costs of this involuntary channel change was placed on the ultimate permittee of Channel 274A.¹

In the most recent FM Auction, Auction 94, there were no bidders at all for Channel 274A at Evert. Thus, the channel remains vacant.² As Mr. Henderson never bid for the channel, his construction permit application for Channel 274A at Evert, Michigan was dismissed on May

¹ The Order also required Bay View Broadcasting, Inc. (“Bay View”) to make a channel substitution from 274A at Pentwater, Michigan to 242A, with the ultimate permittee of Channel 274A required to reimburse Bay View for its reasonable costs in connection with the channel substitution.

5, 2013 (FCC File No. BNPH-20071128AAL). Accordingly, the impetus for the various channel changes has been removed.

Even though there was no bidder for the Evert channel, the new channel at Ludington was acquired at auction.³ Thus, if there is no relief such as that suggested by Synergy here, the Ludington channel bought at auction cannot be operated without the change in channel of WMLQ. But Synergy has no independent reason to change the channel of its station, and there is currently no party with any obligation to reimburse it for the channel change. As such, with the current arrangement of allotments, either the Ludington channel will not be able to be used, or someone needs to reimburse Synergy for the costs of its channel change. The well-established *Circleville* policy⁴ made clear that, while a station can be required to involuntarily change its channel to an equivalent channel, that station would have to have its reasonable costs of changing the channel paid by the party seeking that change. Consistent with *Circleville*, the Order required that the ultimate permittee of Channel 274A reimburse Synergy for its reasonable costs. However, the result of the auction is that there is no permittee of Channel 274A and therefore no party responsible for reimbursing Synergy for its channel substitution expenses. To require the channel substitution by Synergy without a party responsible for expense reimbursement is patently unfair, and contrary to the decision in *Circleville*.

We note that while the party who will become the permittee of Channel 249A at Ludington was not named in the Order as a party responsible for Synergy's channel substitution

² See Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 94, *Public Notice*, DA 13-1080 (2013).

³ See Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 94, *Public Notice*, DA 13-1080 (2013).

⁴ See *Circleville, Ohio*, 8 FCC 2d 159 (1967) (requiring that, whenever an existing station is ordered to change frequency to accommodate another station, the benefitting station must reimburse the affected station for its reasonable and prudent expenses) (“Circleville”).

expenses, it is a station benefitting from the involuntary channel change by Synergy under the standard set forth in *Circleville*. Thus, as an alternative to the relief requested herein, the party who will become the Ludington construction permit holder could agree to assume that responsibility, or the Commission could condition the permit on the assumption of these expenses. Barring such an action, the Order should be undone, and the parties returned to the channels which they occupied prior to the adoption of the Order.

Respectfully submitted,

SYNERGY LAKESHORE LICENSES,
LLC

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Dated: June 27, 2013

CERTIFICATE OF SERVICE

I, Tracey A. Bogans, a legal assistant with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 27th day of June 2013, I served copies of the foregoing “PETITON FOR RULEMAKING” on the following via first-class United States mail, postage prepaid:

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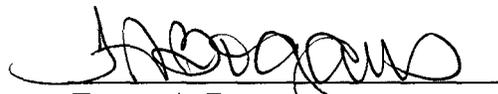
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