

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Received & Inspected

JAN 13 2014

FCC Mail Room

In Re:

Amendment of Section 73.202(b))	MB Docket No. 13-284
Table of Allotments, FM Broadcast)	RM-1170418
Stations)	
(Evert and Ludington, Michigan))	
)	

To: The Secretary
Attn: Chief, Audio Division, Media Bureau

COMMENTS OF WGHN, INC.

WGHN, Inc. ("WGHN"), by its attorney, hereby submits its Comments in support of the changes in the Table of FM Allotments under consideration in the above-referenced Rulemaking proceeding.

In this proceeding, the Commission is considering a request filed by Synergy Lakeshore Licenses, LLC ("Synergy"), licensee of Station WMLQ, Manistee, Michigan, for the Commission to undo changes in the Table of FM Allotments that it made in MM Docket 08-26 in response to a petition by Roy E. Henderson ("Henderson") who had requested that the Commission allot Channel 274A to Evert, Michigan, as that community's first local service. In order to accommodate the Evert allotment, the Commission had also changed the channel of Station WMOM, Pentwater, Michigan, from 274A to 272A, changed the channel of Station WMLQ, Manistee, Michigan, from 249A to 282A, and changed the vacant allotment at Ludington, Michigan, from 249A to 242A.

Synergy has requested that the allotment changes made in Docket 08-26 be undone because the Report and Order which adopted

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the changes, *Evert and Ludington, Michigan*, 24 FCC Rcd 2584 (MB 2009) required that the winning bidder in the auction that was to be held for the Evert channel reimburse the licensees of WMLQ and WMOM for their reasonable costs of changing their stations' channel of operations to accommodate the Evert allotment. Although Henderson had certified in his petition for the Evert allotment that if the petition were granted he would file an application for the Evert channel, and if he was the successful bidder at the auction for the channel, he would build the station, Henderson did not submit a bid for the channel in Auction 94. No one else bid on the channel. Consequently, no one is obligated to reimburse the licensees of WMLQ and WMOM for the costs of changing their channels to accommodate the Evert allotment. Therefore, WMLQ and WMOM are under no obligation to make the changes. Additionally, WGHN, the winning bidder for Channel 249A at Ludington, is precluded from putting its new Ludington station on the air because, in order for it to do so, WMLQ must vacate Channel 249A, and the licensee of WMLQ has made it clear in its Petition for Rulemaking that it will not change its channel from 249A to 282A without reimbursement.

Since there is no one to reimburse WMLQ and WMOM to make the channel changes that they were ordered to accommodate the Evert allotment, and since that failure of anyone to bid on the Evert channel in Auction 94 indicates a lack of any interest in that channel, the logical thing for the Commission to do to clean up the mess that was created by Henderson having petitioned for the Evert

allotment and then failing to fulfill his commitment to bid on the allotment in Auction 94 is simply to cancel the Docket 08-26 allotment changes and restore the original allotments at Pentwater, Manistee and Ludington. Restoring the original allotments will serve the public interest by removing the impediment to WGHN quickly activating the Ludington allotment that it acquired in Auction 94 and thereby bringing a first local service to Ludington.

In paragraph 10 of the Notice of Proposed Rulemaking in this proceeding, the Commission notes that both WGHN and the licensee of WMLQ may incur application costs in reverting to the original Ludington and Pentwater allotments and it asks who, if anyone, should be required to reimburse them for these expenses. The answer to this question is obvious: The person who should be obligated to reimburse WGHN for the application filing fee that it must pay to modify its permit for the Ludington channel to specify the originally allotted channel and who should reimburse the licensee of WMOM for the application filing fee that it paid to change its channel, is Henderson since the allotment mess that is the subject of this proceeding resulted directly from the Commission having granted Henderson's petition to allot Channel 274A at Evert based on his explicit promise that if the channel were allotted he would apply for it and if he were to win the channel at auction he would reimburse the costs incurred by other parties to accommodate the Evert allotment.¹ Requiring Henderson to

¹ Apparently Henderson did file an application to participate in the auction

reimburse WMOM and WGHN for the costs that they incurred as a direct result of Henderson having petitioned for the Evert allotment and then not living up to his commitment to bid on the allotment would have the salutary effect of dissuading other parties in the future from making false representations to the Commission regarding their intention to apply for new FM allotments that they propose.

The Commission also asks for comments as to whether, should it decide not to make the allotment changes under consideration in this proceeding, WGHN might consent to reimburse WMLQ partially for its costs in changing to Channel 282A. The short answer to this question is that in the circumstances it is inconceivable that the Commission would decide not to undo the Docket 08-26 channel allotment changes, since no one is interested in the Evert allotment which the other channel changes were to accommodate and retaining the unwanted Evert allotment would require both WMLQ and WMOM to incur needless expenses for which any reimbursement, let alone full reimbursement, is highly improbable. Moreover, as it is likely that WMLQ's "reasonable costs" of changing channels will be several times what WGHN paid for the Ludington channel, and adding

for the Evert channel, but then failed to submit the required upfront payment and participate in the auction. Simply submitting a preliminary application to obtain the right to bid on a channel is not the equivalent of filing an application for the channel. Had Henderson fulfilled his promise and submitted the required upfront payment and an initial bid, he would have obligated himself to reimburse WMLQ and WMOM, and WGHN would not incur any additional application expenses.

these costs to what it paid for the channel may well make proceeding with construction of the Ludington station uneconomic.

Respectfully submitted,



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January 7, 2014

CERTIFICATE OF SERVICE

I, David Tillotson, hereby certify that a copy of the foregoing COMMENTS IN SUPPORT OF PETITION FOR RULEMAKING have been sent via first class United States mail, postage pre paid, the 8th day of January, 2014, to:

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