

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 01-186
Table of Allotments,) RM-9976
FM Broadcast Stations.) RM-10320
(Honor, Bear Lake, Ludington,)
Walhalla, and Custer, Michigan)¹)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 1, 2002

Released: May 17, 2002

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Northern Radio of Michigan, Inc. (“Northern”), the Commission has before it for consideration the Notice of Proposed Rule Making and Order to Show Cause, 16 FCC Rcd 15251 (2001), requesting the substitution of Channel 264C3 for Channel 264A at Honor, Michigan, and modification of its authorization for Station WIAR to specify operation on Channel 264C3. Northern filed comments supporting the allotment of Channel 264C3 at Honor. WCCW Radio, Inc. (WCCW”), Fort Bend Broadcasting Company (“Fort Bend”) and Lake Michigan Broadcasting, Inc. (“Lake Michigan”) filed comments. Mason County Broadcasting Company (“Mason”) filed a counterproposal.² Reply comments were filed by Fort Bend, Northern and Mason.

2. As stated in the Notice, Northern proposed the substitution of Channel 264C3 for Channel 264A at Honor and modification of its authorization accordingly. To accommodate the substitution at Honor, Northern requested changes at Bear Lake, Ludington and Walhalla, Michigan. Specifically, Northern requested the substitution of Channel 291A for Channel 261A at Bear Lake, Michigan, and modification of the license for Station WSRQ; substitution of Channel 254A for Channel 292A at Ludington, Michigan, and modification of the license for Station WKLA; and, the substitution of Channel 293A for vacant Channel 255A at Walhalla, Michigan. An Order to Show Cause was issued to the licensees of Station WSRQ and Station WKLA. Northern has stated its intention to reimburse Fort Bend and Lake Michigan for expenses involved in changing frequencies.

¹ The community of Custer, Michigan, has been added to the caption.

² The counterproposal filed by Mason County Broadcasting Company was put on public notice on October 23, 2001, Report No. 2509 (RM-10320).

3. Mason submitted a counterproposal requesting the allotment of Channel 263A at Custer, Michigan, as a first local service. Mason contends that its counterproposal submits a plan that will result in a preferable arrangement of allotments by providing a first local service at Custer while Honor retains first local service on Channel 264A. Mason points out that Custer has a population of 312 people according to the 2000 U.S. Census. Custer is located in the western part of Mason County and is supported by tourism and agriculture. The community has various businesses, restaurants and a meat packaging plant. Mason points out that Custer was named after General George Armstrong Custer, originating around 1878 as a station on the Pere Marquette Railroad. Mason believes that providing a first local service to Custer is superior to the proposal of Northern to upgrade Station WIAR at Honor.

4. WCCW, licensee of Stations WCCW(AM) and WCCW-FM, Traverse City, Michigan, and permittee of FM Station WCZW(FM), Charlevoix, Michigan, has no objection to Station WIAR, Honor, upgrading to Class C3 status if no other changes are involved. WCCW opposes the use of Channel 291A in place of Channel 261A at Bear Lake, Michigan, arguing that the substitution will allow Station WSRQ to move into the Charlevoix-Petoskey market. According to WCCW, Charlevoix and Petoskey each have two FM allotments and that granting the substitution at Bear Lake would not serve the public interest by allowing for the possibility of an additional FM station in the area.

5. Fort Bend and Lake Michigan responded to the Order to Show Cause. Fort Bend, currently operating Station WCUZ on Channel 261A, argues that the proposal to remove Channel 261A from Bear Lake is fully consistent with a prior rulemaking proposal in MM Docket No. 00-69. Fort Bend requests that MM Docket 00-69 be finalized prior to the instant proceeding.³ See 16 FCC Rcd 15251 (2001). Fort Bend points out that the essential difference between the two dockets is that Channel 291A would be considered a new allotment or back-fill channel in MM Docket No. 00-69 open to application by any interested party while MM Docket 01-186 proposes use of Channel 291A as a substitution for Channel 261A at Bear Lake and modification of the authorization for Station WCUZ. Fort Bend requests that the Commission resolve MM Docket 00-69 and then proceed with final consideration of Northern's proposal in this proceeding. Lake Michigan, operating Station WKLA at Ludington, argues that the proposed modification of its channel of operation (254A to 292A) is disruptive and confusing to its audience and threatens service to the community in times of an emergency as Station WKLA is the only station in the area with emergency generators at both its studio and its transmitter location providing the ability to operate under all circumstances. Lake Michigan points out that the economic realities of small market broadcasting could force a reduction

³ Fort Bend filed a counterproposal in MM Docket 00-69 requesting the substitution of Channel 260C1 for Channel 261A at Bear Lake and reallocation of the channel to Bellaire, Michigan, as a first local service. Fort Bend further requested the allotment of Channel 291A at Bear Lake as a back-fill channel to provide for continuing FM service at Bear Lake. To accommodate the changes at Bear Lake, Fort Bend also requested changes at Rogers City, Manistique, Ludington, Walhalla and a new allotment at Rapid River, Michigan.

in programming in order to offset any losses from the proposed modification. Moreover, Lake Michigan contends that the use of Channel 291A at Bear Lake at the proposed site has terrain and spacing problems that will prevent city grade coverage to the community.⁴

6. Mason, Fort Bend and Northern filed reply comments. Mason continues to support an allotment at Custer, Michigan, stating its intent to file an application and construct a station in the community. Fort Bend believes that the comments of Lake Michigan and WCCW are duplicative as they made the same arguments in MM Docket No. 00-69 and should not be considered in this proceeding. Although Fort Bend raises concern over an agreement with the prior owner of Station WCUZ regarding reimbursement for changing channels, it will not contest moving its channel as proposed by Northern in this proceeding, provided full reimbursement is made to Fort Bend for any and all expenses required by the move. Fort Bend submits that the public interest would best be served by first considering and adopting Fort Bend's request in MM Docket 00-69 and that the Commission then proceed with final consideration of Northern's proposal in MM Docket 01-186. Northern argues that none of the commenting parties have presented reasons why its proposed upgrade at Honor should not be adopted. According to Northern, it has pledged full reimbursement to the parties changing channels, a site is available that provides city grade coverage to Bear Lake on Channel 291A, WCCA's comments concerning Bellaire, Michigan, are more appropriately considered in MM Docket No. 00-69, and by adjusting the reference coordinates for Channel 264C3 at Honor and Channel 263A at Custer, allotments can be made to both communities.

7. In an attempt to resolve the conflicts between Northern's proposal to upgrade Station WIAR from Channel 264A to Channel 264C3 at Honor and Mason's counterproposal to allot Channel 263A at Custer, the staff performed an engineering analysis to determine if alternate channels were available to resolve the conflict. Our study shows that there are no alternate channels available to accommodate both proposals. Our study further determined that there were no fully spaced alternate sites that would accommodate the proposed allotments at Honor and Custer. Therefore, we must comparatively consider the conflicting proposals under the guidelines set forth in Revision of FM Assignment and Policies and Procedures, 90 FCC Rcd 2d (1982).⁵ The allotment of Channel 264C3 at Honor falls under priority 4), other public interest matters, while the allotment of Channel 263A at Custer falls under priority 3), first local service. Under priority 3), a first local aural service is generally preferred over a proposal to upgrade an existing facility. See

⁴ Further engineering analysis indicates that Channel 291A at coordinates 44-37-25 and 86-00-19 provided city grade coverage to 95.6% of the community of Bear Lake. However, at coordinates 44-17-37 and 86-13-26, 70 dBu coverage would be provided to the entire community.

⁵ The 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 given to priorities (2) and (3).]

Benton, Arkansas, 2 FCC Rcd 1963 (1987). Our analysis shows that the allotment at Custer will provide a new service to 33,177 people while the net gain in population served by upgrading Station WIAR at Honor from Class A to Class C3 service will be 3,922 people. We find that the provision of a new first local aural transmission service at Custer (population 337 people)⁶ must be preferred over the proposal to upgrade an existing service at Honor (population 292 people).

8. We believe the public interest would be served by allotting Channel 263A to Custer, Michigan, as the community's first local aural transmission service. Channel 263A can be allotted to Custer in compliance with the Commission's spacing requirements with a site restriction 4.0 kilometers (2.5 miles) north of the community.⁷ Since Custer is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment.

9. 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 July 1, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

Community	Channel Number
Custer, Michigan	263A

10. A filing window for Channel 263A at Custer, Michigan, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

11. IT IS FURTHER ORDERED, That the request of Northern Radio of Michigan, Inc., seeking the substitution of Channel 264C3 for Channel 264A at Honor, Michigan (RM-9976) IS DENIED.

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

⁶ All population figures are from the 2000 census.

⁷ The coordinates for Channel 263A at Custer are 43-59-10 and 86-14-11.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 236A at Custer, Michigan, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau