

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.
(Evart and Ludington, Michigan)
MB Docket No. 08-26
RM-11418

REPORT AND ORDER
(Proceedings Terminated)

Adopted: February 25, 2009

Released: February 27, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division issued a Notice of Proposed Rule Making and Order to Show Cause in response to a Petition for Rule Making filed by Roy E. Henderson ("Petitioner"). The Notice proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules (the "Rules"), by allotting Channel 274A at Evart, Michigan, as a first local service.

2. In order to accommodate that allotment, the Notice also proposes to substitute Channel 242A for Channel 274A at Pentwater, Michigan, to substitute Channel 249A for vacant Channel 242A at Ludington, Michigan, and to substitute Channel 282A for Channel 249A at Manistee, Michigan. Bay View Broadcasting, Inc. ("Bay View"), licensee of Station WMOM(FM), Pentwater, Michigan, was ordered to show cause why its license should not be modified to specify operation on Channel 242A in lieu of Channel 274A at Pentwater. Synergy Media, Inc. ("Synergy"), licensee of Station WMLQ(FM), Manistee, Michigan, was ordered to show cause why its license should not be modified to specify operation on Channel 282A in lieu of Channel 249A at Manistee. Should Petitioner become the ultimate permittee of Channel 274A at Evart, Petitioner agrees to reimburse the licensees of Stations WMOM(FM) and WMLQ(FM), respectively, for the reasonable costs incurred in connection with the proposed channel changes.

3. Petitioner filed comments supporting the allotment changes proposed in the Notice. No response was received from Bay View, which is therefore deemed to have consented to the substitution of Channel 242A for Channel 274A at Pentwater, Michigan.

4. On May 20, 2008, Synergy submitted reply comments addressing the proposed substitution of Channel 282A for Channel 249A at Manistee, Michigan. Synergy states that it has no objection to Petitioner's proposal, provided that Petitioner's reimbursement to Synergy for its "reasonable and

1 Evart and Ludington, Michigan, Notice of Proposed Rule Making, 23 FCC Rcd 4055 (M.B. 2008).

prudent” out-of-pocket expenses includes the cost of a new transmitter, new antenna, and related promotional materials. Synergy explains that Station WMLQ(FM) currently operates with a 1965 Collins transmitter for which parts are no longer available.

5. Petitioner asserts that Synergy’s comments are untimely, because those comments constitute Synergy’s statement regarding the channel substitution at Manistee, which the *Order to Show Cause* required Synergy to file by May 5, 2008. Petitioner therefore urges that Synergy’s reply comments be stricken from the record of this proceeding. Petitioner further notes that Synergy has raised the details of reimbursement prematurely, because the specific expenses subject to reimbursement are properly addressed subsequent to the conclusion of this rule making and the auction of Channel 274A at Ewart, Michigan.

6. We agree with Petitioner that Synergy failed to respond to the *Order to Show Cause* within the specified time period. We therefore will grant Petitioner’s motion to strike Synergy’s reply comments as untimely. Moreover, even if Synergy had filed its response on a timely basis, we would decline to consider the particulars of reimbursement within the context of this rule making proceeding. We agree with Petitioner that the specific components of appropriate reimbursement should be determined following the auction of Channel 274A at Ewart, and the consequent assumption of compensation responsibility by the ultimate permittee.

7. We believe that the proposed allotment of Channel 274A at Ewart, as well as the channel substitutions at Pentwater, Ludington, and Manistee, would serve the public interest. These changes will provide Ewart, Michigan, with its first local transmission service. In addition, implementation of the proposed channel substitutions will not create any deleterious effect upon the services that can be made available using the current Class A allotments at Pentwater, Ludington, and Manistee.

8. Channel 274A can be allotted at Ewart with a site restriction of 14.6 km (9.1 miles) north of city reference coordinates. The reference coordinates for Channel 274A at Ewart are: 44-01-43 NL and 85-17-51 WL. Channel 249A can be allotted at Ludington with a site restriction of 9.0 km (5.6 miles) north of city reference coordinates. The reference coordinates for Channel 249A at Ludington are: 44-01-53 NL and 86-24-57 WL.

9. 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.²

10. Accordingly, pursuant to 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 Rules, IT IS ORDERED, That effective March 30, 2009, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

² See 5 U.S.C. § 801 (a)(1)(A).

<u>Community</u>	<u>Channel Number</u>
Ewart, Michigan	274A
Ludington, Michigan	249A

11. IT IS FURTHER ORDERED, pursuant to the authority found 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), 0.283, and 1.420(i), that effective April 13, 2009, the Media Bureau's Consolidated Data Base System will reflect for the following stations and allotments in Michigan: (1) Channel 242A at Pentwater, Michigan, as the reserved assignment for Station WMOM(FM), in lieu of Channel 274A; and (2) Channel 282A at Manistee, Michigan, as the reserved assignment for Station WMLQ(FM), in lieu of Channel 249A.

12. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. Section 316(a), that the license of Bay View Broadcasting, Inc., for Station WMOM(FM), Channel 274A, Pentwater, Michigan, IS MODIFIED to specify operation on Channel 242A at Pentwater, Michigan, subject to the following conditions:

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

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. IT IS FURTHER ORDERED, That the ultimate permittee of Channel 274A, Ewart, Michigan, shall reimburse Bay View Broadcasting, Inc., for its reasonable costs of changing the frequency of its Station WMOM(FM), Pentwater, Michigan, from Channel 274A to Channel 242A.

14. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. Section 316(a), that the license of Synergy Media, Inc., for Station WMLQ(FM), Channel 249A, Manistee, Michigan, IS MODIFIED to specify operation on Channel 282A at Manistee, Michigan, subject to the following conditions:

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

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

15. IT IS FURTHER ORDERED, That the ultimate permittee of Channel 274A, Ewart, Michigan, shall reimburse Synergy Media, Inc., for its reasonable costs of changing the frequency of its Station WMLQ(FM), Manistee, Michigan, from Channel 249A to Channel 282A.

16. IT IS FURTHER ORDERED, That the reply comments of Synergy Media, Inc., are dismissed as an untimely response to the *Order to Show Cause* in this proceeding.

17. 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:

Robert J. Buenzle, Esq.
Law Offices of Robert J. Buenzle
11710 Plaza America Drive
Suite 2000
Reston, Virginia 20190
(Counsel for Roy E. Henderson)

Radio Station WMOM(FM)
Bay View Broadcasting, Inc.
4359 South Howell Avenue
Suite 106
Milwaukee, Wisconsin 53207

Dennis J. Kelly, Esq.
Law Offices of Dennis J. Kelly
Post Office Box 41177
Washington, D.C. 20018
(Counsel for Bay View Broadcasting, Inc.)

Radio Station WMLQ(FM)
Synergy Media, Inc.
Post Office Box 855
Ludington, Michigan 49431

Howard M. Liberman, Esq.
Drinker, Biddle, & Reath, LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005-1208
(Counsel for Synergy Media, Inc.)

18. The window periods for filing applications for Channel 274A at Ewart, Michigan, and for

Channel 249A at Ludington, Michigan, will not be opened at this time. Instead, the issue of opening filing windows for these allotments will be addressed by the Commission in a subsequent *Order*.

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

20. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072. Questions related to the application filing process for Channel 274A at Ewart, Michigan, or Channel 249A at Ludington, Michigan, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau