

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

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 99-134  
Table of Allotments, ) RM-9543  
FM Broadcast Stations. ) RM-9572  
(Drummond and Victor, Montana) )

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: April 12, 2000**

**Released: April 25, 2000**

By the Chief, Allocations Branch:

1. In response to Petitions for Rule Making filed separately by the Battani Corporation (“Battani”) and Mountain West Broadcasting (“Mountain West”) that are mutually exclusive, the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 6857 (1999), requesting new allotments at Drummont and Victor, Montana. Battani and Mountain West filed supporting comments. Idaho Broadcasting Consortium (“Idaho”) filed a counterproposal.<sup>1</sup> Edith Fransen (“Fransen”), President, Broadcast House, Anaconda, Montana, filed comments.<sup>2</sup>

<sup>1</sup> The counterproposal filed by Idaho is not acceptable for consideration in this proceeding for the following reasons. First, it appears that Idaho is requesting the substitution of Channel 294C1 for Channel 294C2 at McCall, Idaho, and, reallocation of Channel 294C1 to Victor, Montana, under Section 1.420(I) of the Commission’s Rules which 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. See Modification of FM and TV Authorizations to Specify a New Community of License (“Change of Community R&O”), 4 FCC Rcd 4870 (1989), recon. granted in part (“Change of Community MO&O”), 5 FCC Rcd 7094 (1990). Idaho is a first-come/first-serve applicant for Channel 294C2 at McCall, Idaho (BPH-971023MD) and Section 1.420(I) applies to licensees and permittees but not to applicants. Second, although Idaho’s comments were titled “Counterproposal,” the comments can not be treated as a counterproposal. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See, e.g., Impelementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931 (1990). The proposal for Channel 294C1 at Victor is not mutually exclusive with Channel 269C3 at Victor or Channel 268C at Drummond. Idaho has merely proposed alternate channels for the communities. Idaho also requests the allotment of Channel 285C3 at Alberton, Montana, supporting the allotment of Channel 268C at Drummont, Montana, as proposed in the Notice. In reviewing Idaho’s comments, a staff engineering analysis indicates that Channel 294C1 at Victor, Montana, is short spaced to Station KMSM-FM, Butte, Montana, on Channel 295A. The analysis also shows that Channel 294C1 at Victor is short spaced to the vacant allotment site for Channel 294C2 at McCall, Idaho, as well as to Idaho’s application for Channel 294C2 at McCall.

<sup>2</sup> The comments filed by Fransen have not been accepted as they were not filed in compliance with Section 1.420 of the Commission’s Rules. Further, had the comments been acceptable, the Commission has previously stated that concerns over whether additional allotments will increase competition raises issues which are not relevant in

2. As stated in the Notice, Mountain West proposed the allotment of Channel 269C3 at Victor, Montana, as the community's first local broadcast service. The Notice stated that Victor is an incorporated community located in Ravalli County with a population of 500 people, is listed in the U.S. Census, and has its own post office and zip code (59875). Battani proposed the allotment of Channel 268C at Drummond, Montana, as a first local service. We found that Drummond has its own post office and zip code (59832) and that the 1990 U.S. Census credits Drummond with a population of 264 people. Parties filing comments were requested to present the Commission with specific information to demonstrate that Drummond qualifies as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991)

3. In comments, Mountain West continues to support the allotment of Channel 269C3 at Victor. Mountain West argues that Victor with a population of 500 persons should be preferred over an allotment at the smaller community of Drummond. Mountain West further states that it does not oppose an allotment at Drummond. Battani provided comments supporting the allotment of Channel 268C at Drummond. Battani states that Drummond qualifies as a community for allotment purposes as it is an incorporated city with a city council, mayor and city hall, has its own fire department, post office and school system. Battani further states that Drummond has several churches, numerous commercial businesses, a medical clinic, a grocery and hardware store, bank, gas stations, and some restaurants.<sup>3</sup> Battani argues that despite its modest population, the community of Drummond qualifies as a community for allotment purposes, is an important tourist stop along busy Interstate Highway 90 and should be preferred over an allotment at Victor.

4. Conflicting proposals, such as have been filed in this proceeding, are generally considered under the guidelines set forth in Revision of FM Assignment and Policies and Procedures, 90 FCC rcd 2d (1982).<sup>4</sup> However, in this instance, since an additional channel is available, there is no need to compare the two communities. Therefore, after consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of FM channels at Victor, Montana, and Drummond, Montana, providing a first local service at both communities. Channel 268C can be allotted to Drummond, Montana, in compliance with the Commission's

spacing requirements with a site restriction 51.8 kilometers (32.2 miles) southwest of the community.

---

the allotment context. See FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. Denied, 4 FCC Rcd 2276 (1989).

<sup>3</sup> Staff research located street addresses in Drummond for the City Hall, Community Health Nurse, Drummond Ambulance Service, Church of Jesus Christ, Drummond Community Church, Drummond Senior Citizens Center, Freda's Child Care, Front Street Market, Frosty Freeze, Wagon Wheel Motel & Café, Rustic Expressions, Drummond Veterinary Clinic, Flint Creek Valley Bank, Good Time Camping & RV Park, and the Drummond Elementary School and Drummond High School.

<sup>4</sup> 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).]

The site restriction avoids a short spacing to Station KZMT, Channel 266C, Helena, Montana. Channel 250C3 can be allotted to Victor, Montana, in compliance with the spacing requirements without a site restriction.<sup>5</sup> Since the communities of Drummond and Victor are located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government has been requested for both allotments.<sup>6</sup>

5. 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 June 9, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Drummond, Montana	268C
Victor, Montana	250C3

6. A filing window for Channel 268C, Drummond, Montana, and Channel 250C3, Victor, Montana, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

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

---

<sup>5</sup> The coordinates for Channel 268C at Drummond are 46-16-47 and 113-31-05. The coordinates for Channel 250C3 at Victor are 46-25-06 and 114-08-54.

<sup>6</sup> Canadian concurrence has been received for Channel 268C at Drummond. Although concurrence has been requested for Channel 250C2 at Victor, notification has not been received. Therefore, operation with the facilities specified for Victor herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1991 Canada-USA FM Broadcast Agreement or if specifically objected to by Canada.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 268C, Drummond, Montana, or Channel 250C3, Victor, Montana, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau