

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-53
FM Broadcast Stations.)	RM-9823
(Detroit Lakes and Barnesville,)	RM-9950
Minnesota, and Enderlin, North)	
Dakota))	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 19, 2001

Released: December 21, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making in this proceeding, 15 FCC Rcd 5598 (2000). T&J Broadcasting, Inc. (“T&J Broadcasting”) and Triad Broadcasting Co., L.L.C. (“Triad Broadcasting”) both filed Comments and Reply Comments. Enderlin Broadcasting Company (“Enderlin Broadcasting”) filed a Counterproposal. In addition, Triad Broadcasting filed a Motion to Strike, T&J Broadcasting filed an Opposition to Motion to Strike and Triad Broadcasting filed a Reply to Opposition to Motion to Strike. For the reasons discussed below, we are reallocating Channel 236C1 from Detroit Lakes, Minnesota, to Barnesville, Minnesota, and are modifying the Station KRVI license to specify Barnesville as the community of license.¹

Background

2. At the request of T&J Broadcasting, licensee of Station KRVI (formerly KFGX), Channel 236C1, Detroit Lakes, Minnesota, the Notice in this proceeding proposed the reallocation of Channel 236C1 to Barnesville, Minnesota, and modification of the Station KRVI license to specify Barnesville as the community of license. This would provide Barnesville, with a population of 2,066 persons, with a first local service. In response to the Notice, Enderlin Broadcasting filed a Counterproposal proposing the allotment of Channel 233C1 to Enderlin, North Dakota, as a first local service. In its Comments, Triad Broadcasting contended that due to proximity of the Fargo-Moorhead Urbanized Area, the proposed reallocation to Barnesville is not entitled to consideration as a first local service.²

3. T&J Broadcasting filed its request pursuant to Section 1.420(i) of the Commission’s Rules which permits the modification of a station authorization to specify a new community of license. See Modification of FM and Television Authorizations to Specify a New Community of License

¹ The reference coordinates for the Channel 236C1 allotment at Barnesville, Minnesota, are 46-49-10 and 96-45-56.

² Triad Broadcasting is the licensee of FM Station KPFX, Fargo, North Dakota, FM Station KLTA, Breckenridge, Minnesota, AM Station KQWB, West Fargo, North Dakota, and FM Station KVOX and FM Station KQWB, Moorhead, Minnesota.

("Community of License"), 4 FCC Rcd 4870 (1989); recon. granted in part 5 FCC Rcd 7094 (1990). Under Community of License, we are required to determine whether the proposed change in community of license will result in a preferential arrangement of allotments. In determining whether a proposal would result in a preferential arrangement of allotments, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1988).³ Before we can consider the other issues in this proceeding, we must first consider the Triad Broadcasting argument that Barnesville is not entitled to consideration as a first local service.

4. At the proposed transmitter site, we recognize that Station KRVI will increase its 70 dBu coverage of the Fargo-Moorhead Urbanized Area from 53.6% to nearly all of the Urbanized Area. We are concerned with the potential migration of stations from lesser served rural areas to well-served urban areas. To this end, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination regarding a proposal to award a first local service preference, we apply existing precedents. See e.g. Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). In essence, we consider the extent the station will provide service to the entire Urbanized area, the relative populations of the suburban and central city, and, most importantly, the independence of the suburban community.⁴ We will discuss the Triad Broadcasting argument under the guidelines set forth in Faye and Richard Tuck.

5. The first area of inquiry concerns the extent a station will provide service to the entire Urbanized Area. As stated above, the proposed reallocation will result in Station KRVI increasing its 70 dBu service to the Fargo-Moorhead Urbanized Area from 53.6% to the entire Urbanized Area. This does not support a conclusion that Barnesville is not entitled to consideration as a first local service. As a Class C1 facility, the 70 dBu contour will extend 50 kilometers and invariably serve a large area, including an Urbanized Area of only 99.3 square kilometers. Our second area of inquiry involves the relative populations of Fargo, North Dakota, Moorhead, Minnesota, and Barnesville, Minnesota. The 1990 U.S. Census population of Barnesville is 2,066 persons, whereas the respective populations of Fargo and Moorhead are 74,111 and 32,295 persons. Thus, the Barnesville population is 2.8% of the population of Fargo and 6.4% of the population of Moorhead. Such percentages have not precluded favorable consideration as a first local service. See e.g. Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992). Our third, and most important, inquiry is the independence of Barnesville from the Urbanized Area. In order to address the arguments contained in the Triad Broadcasting Comments, we will evaluate the Barnesville proposal

³ The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁴ In Faye and Richard Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether the community leaders and residents perceive the the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local phone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies upon the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1996); Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570 (1997).

using each of the eight factors outlined earlier. A majority of these factors support a finding of independence from the Fargo-Moorhead Urbanized Area.

6. The first factor is the work patterns of the Barnesville residents. In this connection, T&J Broadcasting specifically identifies the Barnesville Care Center employing over 100 persons, the Barnesville School District employing 87 persons the Barnesville City Government employing 33 persons, and Deans Bulk Oil employing 29 people. T&J Broadcasting also states that Barnesville residents are employed at local establishments including local restaurants, grocery stores, the Barnesville Area Clinic, physician's offices, the Barnesville Collision Center, Braten Accounting, as well as clothing, convenience and farming supply stores. Without stating the number of persons comprising the Barnesville workforce or the number of Barnesville residents working in either Fargo or Moorhead, Triad Broadcasting states that only 367 persons are actually employed in Barnesville. In this instance, this number is significant and sufficient to support a favorable finding on this factor. C.f Coolidge and Gilbert, Virginia, 11 FCC Rcd 3610 (1996). In regard to the second factor, whether the smaller community has its own newspaper or other media that covers the community's needs and interests, Barnesville has its own weekly newspaper, the Barnesville Record-Review, published solely for Barnesville. This newspaper carries Barnesville news and advertising, coverage of local events and features on community leaders. The fact that the a Fargo newspaper is available in Barnesville does not preclude a favorable finding on this factor. C.f Ada, Newcastle and Watonga, Oklahoma, supra.

7. In regard to the third factor, perception of community leaders and residents, T&J Broadcasting refers to 30 community organizations that sponsor and organize local events such as the Potato Days Festival and the Hometown Christmas Celebration. While Triad Broadcasting is correct in stating that T&J Broadcasting has not submitted any letter from a local official or community leader to the effect that Barnesville is separate from the Fargo-Moorhead Urbanized Area, we do believe that the existence of elected government officials, local civic organizations and civic activities are probative of a perception that Barnesville is, in fact, separate from an Urbanized Area 25 miles away. The fourth factor, local government and elected officials, clearly support a determination concerning the independence of Barnesville. The Barnesville city government is comprised of an elected mayor and six member city council. The Barnesville city government employs 33 residents and has an administrative staff including a city administrator, finance officer, telephone operations manager, records manager, customer service representative and city attorney. Similarly, factor 5, local telephone directory and zip code, support a determination that Barnesville is independent of the Urbanized Area. Barnesville has its own zip code and local post office. In addition, the city owns the local phone company, providing local, long distance, internet access, and a local telephone directory.

8. It is also our view that factor 6, whether the community has its own commercial establishments, health facilities, and transportation systems, supports a conclusion that Barnesville is independent of the Fargo-Moorhead Urbanized Area. Barnesville has a variety of commercial establishments including four grocery stores, convenience stores, clothing stores, a bakery, barber, motel, auto body repair shop and eight restaurants. Barnesville has a doctor, two dentists, its own clinic and a nursing home. Barnesville also has a municipal airport. The fact that some residents travel to Fargo for shopping or use of the Dakota Hospital does not obviate a favorable finding with respect to factor 6. Our evaluation of factor 7, the extent the specified community and central city are part are part of the same advertising market, suggests that Barnesville is part of the same advertising market. Barnesville is located within both the Fargo-Moorhead Arbitron Metro and the Fargo-Moorhead Designated Market Area. On the other hand, factor 8, the extent to which the specified community relies upon the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries, supports a favorable finding. Barnesville has its own municipally owned water and sewer service, electric utility, local phone company, local telecommunications service, cable TV, and garbage and recycling center. In addition, Barnesville has its own local police department, volunteer fire department, ambulance service, elementary and high schools, public library, daycare center, two parks, a golf course, an animal control service and camping sites.

9. Triad Broadcasting also contends that our previous decisions with respect to Section 1.420(i) of the Rules and a first local service preference have been inconsistent with Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951) and RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990). In support of this contention, Triad Broadcasting specifically discusses the Commission decision in RKO General, Inc. (KFRC), *supra*, in which the Commission did not afford Richmond, California, a preference as a first local service. Triad Broadcasting argues that a decision awarding Barnesville a preference as a first local service would be inconsistent with RKO General, Inc. (KFRC). We disagree. That proceeding involved a six-way comparative hearing for the facilities of former AM Station KFRC, San Francisco, California. Two of the applicants specified Richmond, California, as their proposed community of license even though they had proposed facilities and coverage identical to the facilities and coverage by the other applicants who had proposed San Francisco as the community of license. In order to preclude an anomalous and artificial resolution of that comparative application proceeding, the Commission did not afford Richmond a dispositive preference as a first local service. Even though the communities of Richmond and Barnesville have similar characteristics regarding independence from an Urbanized Area, the situations are distinguishable. Unlike that proceeding, T&J Broadcasting does not propose an allotment to Barnesville which had been previously licensed to Fargo. Similarly, T&J Broadcasting does not seek a preference as a first local service to Barnesville at the expense of a competing applicant who has proposed identical facilities as a Fargo station. Rather, as required by Community of License, it is incumbent upon us to determine whether this reallocation proposal would result in a preferential arrangement of allotments. It is our view that reallocation Channel 236C1 from Detroit Lakes to Barnesville as a first local service does, in fact, result in a preferential arrangement of allotments. *See also Suburban Community Policy, the Berwick Doctrine, and the DeFacto Reallocation Policy*, 93 FCC 2d 436 (1983), *recon. denied*, 56 RR 2d 835 (1984), *aff'd sub nom. Beaufort County Broadcasting Co. v. FCC*, 787 F. 2d 645 (D.C. Cir. 1986).

10. In addition to our determination that Barnesville is entitled to consideration as a first local service, it is still necessary to compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, *supra*. In doing so, we recognize that even though Station KRVI is being forced off its existing tower due to the DTV transition and it proposing to relocate to an existing tower, there will be a net loss of service to 32,674 persons. In regard to the area losing service, nearly 91% will continue to receive at least five fulltime aural services. In regard to the remaining population, 1,458 persons will receive four fulltime aural services, 449 persons will receive three fulltime aural services, and 54 persons will be left with only two services. In this instance, these populations do not preclude favorable action on this proposal. *See Earle, Pocohantas and Wilson, Arkansas, and Como and New Albany, Mississippi*, 10 FCC Rcd 8270 (1995); *Huntsville and Willis, Texas*, 10 FCC Rcd 3329 (1995); *see also Seabrook, Huntsville, Bryan, Victoria, Kennedy and George West, Texas*, 10 FCC Rcd 9360 (1995). It is also our view that a first local service at Barnesville results in a preferential arrangements of allotments notwithstanding the fact Station KRVI will serve fewer persons as a result of the necessary relocation of its transmitter site to an existing tower. This is because a first local service is considered under Priority (3) while a proposal only proposing to serve a larger number of persons is considered under Priority (4) of the FM allotment priorities. We also note that Detroit Lakes will continue to receive local service from Station KDLM and Station KRCQ.

Barnesville, Minnesota, and Enderlin, North Dakota

10. As stated earlier, Enderlin Broadcasting filed a Counterproposal proposing the allotment of Channel 233C1 to Enderlin, North Dakota, as a first local service. There is no alternate channel for either Barnesville or Enderlin. As such, it is necessary to compare a first local service at Barnesville versus a first local service at Enderlin. In this situation, the community of Barnesville (with a U.S. Census population of 2,066 persons) is entitled to a preference over Enderlin (with a U.S. Census population of 997 persons). *See West Liberty and Richwood, Ohio*, 6 FCC Rcd 6068 (1991); *Three Oaks and Bridgman, Michigan*, 5 FCC Rcd 1004 (1990). In a separate context, we cannot favorably entertain a

suggestion advanced in Reply Comments by T&J Broadcasting that alternate Channel 256C1 be allotted to Enderlin. This alternate channel would have required the substitution of Channel 296C for vacant Channel 256C at Gackle, North Dakota. An allotment proposal which introduces an additional community into a proceeding must be advanced in the initial comment period. See Corpus Christi and Three Rivers, Texas, 11 FCC Rcd 517 (1996). As such, we will not consider a Channel 256C1 proposal for Enderlin in the context of this proceeding.⁵

11. Accordingly, pursuant to authority contained in Sections 4(i) 5©(1), 303(g) and ® 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 February 6, 2002, the Table of FM Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Barnesville, Minnesota	236C1
Detroit Lakes, Minnesota	272C2

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of T&J Broadcasting, Inc. for Station KRVI, Channel 236C1, Detroit Lakes, Minnesota, IS MODIFIED to specify Barnesville, Minnesota, as its community of license, 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 construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by Enderlin Broadcasting Company IS DISMISSED.

14. IT IS FURTHER ORDERED, That the aforementioned Motion to Strike filed by Triad Broadcasting Co., L.L.C. IS DISMISSED.

15. Pursuant to Sections 1.1104(1)(k) and (3)(m) of the Commission's Rules, any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, T&J Broadcasting, Inc. is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in community of license.

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

⁵ The Motion to Strike filed by Triad Broadcasting is directed against this alternate Channel 256C1 allotment at Enderlin. In view of our decision not to consider this proposal, we are dismissing the Motion to Strike as moot.

16. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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