

**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. 00-69
FM Broadcast Stations.)	RM-9850
(Cheboygan, Rogers City, Bear Lake, Bellaire,)	RM-9945
Rapid River, Manistique, Ludington, Walhalla,)	RM-9946
and Onaway, Michigan))	

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: February 25, 2004

Released: February 27, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company (“Fort Bend”), licensee of Station WCUZ (formerly WSRQ), Channel 261A, Bear Lake, Michigan, directed to an earlier *Memorandum Opinion and Order* in this proceeding.¹ Lake Michigan Broadcasting, Inc. (“Lake Michigan”) filed an Opposition to Petition for Reconsideration. Fort Bend filed a Reply to Opposition. For the reasons discussed below, we deny the Fort Bend Petition for Partial Reconsideration.

Background

2. In the *Report and Order* in this proceeding, we allotted Channel 292A to Onaway, Michigan, as a first local service, and allotted Channel 249C3 to Cheboygan, Michigan, as a second local service.² In doing so, we denied a Counterproposal filed by D&B Broadcasting LLC, former licensee of Station WCUZ, proposing the substitution of Channel 260C1 for Channel 260A at Bear Lake, Michigan, reallocation of Channel 260C1 to Bellaire, Michigan, and modification of the Station WCUZ license to specify operation on Channel 260C1 at Bellaire.³ In order to replace the removal of the sole local service at Bear Lake, D&B Broadcasting proposed the allotment of Channel 291A to Bear Lake as a “backfill.” D&B Broadcasting also proposed the allotment of Channel 259A to Rapid River, Michigan, and related channel substitutions at Manistique, Ludington and Walhalla, Michigan.

3. In the *Report and Order*, we determined that the proposed site for a Channel 291A allotment

¹ *Cheboygan, Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla and Onaway, Michigan*, 18 FCC Rcd 8532 (MB 2003).

² *Cheboygan, Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla and Onaway, Michigan*, 16 FCC Rcd 1525 (MMB 2000).

³ Fort Bend is now the licensee of Station WCUZ.

at Bear Lake was located in the Bar Lake Swamp and was unusable for a transmitter site. As such, we denied the proposed reallocation of Channel 260C1 to Bellaire because it would be removing the sole local service at Bear Lake. In view of this determination, we did not address the Northern Michigan allegation that a Channel 260C1 allotment at Bellaire would not be in compliance with Section 73.315 of the Rules due to a terrain obstruction between the proposed transmitter site and Bellaire. Both Northern Michigan and Fort Bend filed a Petition for Reconsideration directed to the *Report and Order*. In the *Memorandum Opinion and Order*, we granted, in part, the Petition for Reconsideration filed by Northern Michigan and denied the Petition for Reconsideration filed by Fort Bend. In doing so, we agreed that the transmitter site for the proposed Channel 291A allotment at Bear Lake was, in fact, located on dry land with electrical service. On the other hand, we disagreed with the Fort Bend contention that a suitable transmitter site exists for its proposed reallocation of Channel 260C1 to Bellaire. In view of the fact that we would not be reallocating Channel 260C1 to Bellaire, it was not necessary to allot Channel 291A to Bear Lake as a backfill.

4. In its Petition for Partial Reconsideration, Fort Bend now requests that we substitute Channel 291A for Channel 261A at Bear Lake and modify its Station WCUZ license to specify operation on Channel 291A. In support of this request, Fort Bend notes that substituting Channel 291A for Channel 261A would enable Station WCUZ to operate with maximum Class A FM facilities. In regard to the Channel 291A allotment, Fort Bend contends that this channel is now available as a substitution for Channel 261A because no party expressed an interest in this allotment during the course of this proceeding. For these reasons, Fort Bend argues that no purpose would be served by instituting a new proceeding and the public interest would be served by a rapid introduction of an improved service at Bear Lake.

Discussion

5. We deny the Petition for Partial Reconsideration. Fort Bend has not alleged either factual or legal error in the earlier *Memorandum Opinion and Order*. Rather, Fort Bend has impermissibly used its Petition for Partial Reconsideration as an attempt to advance a new counterproposal into this proceeding. The proposed Channel 291A substitution at Bear Lake is an untimely counterproposal in contravention of Section 1.420(d) of the Rules which requires a counterproposal to be filed by the comment date.⁴ Throughout this proceeding, Fort Bend proposed only the substitution of Channel 260C1 for Channel 260A at Bear Lake and reallocation of Channel 260C1 to Bellaire and modification of its Station WCUZ license to specify operation on Channel 260C1 at Bellaire. We have never afforded the public an opportunity to comment on a counterproposal proposing the modification of the Station WCUZ license to specify operation on an alternate Class A channel at Bear Lake. Indeed, a proposed Channel 291A substitution at Bear Lake would not have been considered as a counterproposal in this proceeding because it did not conflict with the initial *Notice of Proposed Rule Making* proposing a Channel 260C2 allotment at Cheboygan and a Channel 292C2 substitution at Rogers City, Michigan.⁵

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company IS DENIED.

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

⁴ 47 C.F.R. § 1.420(d).

⁵ *Cheboygan and Rogers City, Michigan*, 15 FCC Red 10292 (MMB 2000).

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

FEDERAL COMMUNICATIONS COMMISSION

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