

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

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|---------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| FM Table of Allotments, |) | |
| FM Broadcast Stations. |) | MM Docket No. 01-33 |
| (Caro and Cass City, Michigan) |) | RM-10060 |

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

Adopted: March 10, 2004

Released: March 12, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration of the *Report and Order* (“*R&O*”)¹ in this matter, filed by Edward Czelada (“Czelada”).² The *R&O*, issued at the request of Edwards Communications, LC (“Edwards”) licensee of Station WIDL(FM) Caro, Michigan, substituted Channel 221C3 for Channel 221A at Caro, Michigan, reallocated Channel 221C3 from Caro to Cass City, Michigan, as the community’s first local transmission service, and modified Station WIDL’s authorization to specify Cass City as the community of license. Subsequently, an *Erratum* was issued adding a footnote which had been inadvertently omitted from the *R&O*. Edwards filed an Opposition to Petition for Reconsideration and Czelada filed a response.

2. In the footnote to the *R&O*, we addressed a pleading filed by Edwards which was not considered because it was defective. Edwards requested that we allot Channel 297C3 at Cass City rather than Channel 221C3 and allot Channel 218C3 at Ubly, Michigan so that he could apply for Channel 218C3 at Ubly once the freeze on the filing of applications in the reserved band is lifted. We stated:

We are not considering this pleading in this proceeding because it was defective when filed. *See* [Indio and Indian Wells, California], 15 FCC Rcd 23,845 (2000). First, we cannot make allotments in the FM reserved band, as those channels are properly requested by application, and there is no exception to this rule when there is a freeze on the filing of new applications for that band. *See* 47 CFR §§73.501 and 73.509; *see also* [Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations], 44 RR2d 235 (1978) (Commission considered but did not adopt, a table of allotments for the FM noncommercial band, but rather retained its current practice of requiring FM stations in the reserved band to be chosen by applications judged strictly on their own engineering terms, using an interference standard). Secondly, the pleading did not include an engineering study, and our own engineering analysis shows that pursuant to the minimum distance separation requirements of Section 73.207(b) and the principal

¹ *See Caro and Cass City, Michigan*, 16 FCC Rcd 9461 (2001) (Corrected by *Erratum* issued on May 11, 2001(unpub.)).

² The Petition for Reconsideration was placed on Public Notice. *See* Report No. 2492 (July 5, 2001).

community coverage requirements of Section 73.315(a) of the Commission's Rules, Channel 297C3 cannot be allotted at Cass City.³

3. Czelada contends that the *R&O* failed to fully consider his pleading. We disagree. The *Erratum* properly evaluated Edwards' filing on the merits.⁴ Czelada also argues that we should accept his corrections for Channel 297C3 at Cass City which were submitted with his Petition for Reconsideration filed on June 11, 2001 and in his response to Edwards' Opposition to Petition for Reconsideration filed on July 10, 2001. Counterproposals are required to be filed by the comment deadline set in the Notice of Proposed Rulemaking and they must be technically correct and substantially complete when filed.⁵ The comment date in this proceeding was April 17, 2001. Any changes to the counterproposal would have been timely only if they had been filed prior to that date. Under our rules, these proffered corrections have not been considered because they are not timely. Furthermore, had we considered them, we would have rejected them because our engineering analysis shows that Channel 297C3 cannot be allotted to Cass City at any site in accordance with our rules.

4. Czelada additionally argues that Section 307(b) of the Communications Act, as amended, requires that his proposal to allot Channel 218C3 at Ubyly be preferred over the allotment of Channel 221C3 at Cass City. As stated in the *R&O*, use of a channel in the FM reserved band is properly requested by application, and there is no exception to this rule.⁶

5. Finally, Czelada states that the coordinates for Channel 221C3 at Cass City in the *R&O* are incorrect. We agree that a typographical error was made and hereby correct those coordinates to reflect the actual site requested and is now reflected in our database information. Those coordinates are North Latitude 43-38-20 and West Longitude 83-08-38.

6. IT IS ORDERED That the Petition for Reconsideration filed by Edward Czelada IS DENIED.

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

³ See *Caro and Cass City, Michigan*, 16 FCC Rcd 9461 (2001) (Corrected by *Erratum* issued on May 11, 2001(unpub.)).

⁴ In addition, at the time Czelada filed, use of Channel 218C3 at Ubyly was precluded by pending applications for noncommercial educational stations on Channel 218A at Bridgeport (File No. BNPED-20000214ABC (dismissed February 18, 2004)) and Fremont, Michigan (File No 20000307AAA). Edwards points out that there were additional defects with Czelada's Petition for Rulemaking, *i.e.*, it was not verified, as required by Section 1.52 of the Rules, Czelada failed to pledge to apply for the channel and construct the station, and Czelada, as an individual, is ineligible to hold an authorization for a noncommercial educational station.

⁵ See *Auburn, et al., Alabama*, 18 FCC Rcd 10333 (2003); *Lincoln, Osage Beach, Steelville and Warsaw, Missouri*, 17 FCC Rcd 6119 (2003).

⁶ See 47 CFR §§73.501 and 73.509; see also *Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations (Second Report and Order* in Docket No. 20735), 44 RR2d 235 (1978).

8. For further information contact Victoria M. McCauley, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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