

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

MM Docket No. 88-195

In the Matter of

Amendment of Section 73.202(b), RM-5810
Table of Allotments,
FM Broadcast Stations.
(Onawa, Iowa, and Vermillion,
South Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 29, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Barnco (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2792 (1988), proposing the substitution of Channel 272C1 for Channel 272A at Onawa, Iowa, and the modification of its construction permit for Station KOOO to specify operation on the higher powered channel. In addition, an *Order to Show Cause* was directed to Vermillion Radio, Inc. (Vermillion Radio), licensee of Station KVRF, Vermillion, South Dakota, as to why its license should not be modified to specify operation on Channel 292A in lieu of its present Channel 272A. Petitioner and Vermillion Radio filed comments.

2. Petitioner supports the allotment of Channel 272C1 to Onawa and the modification of its construction permit, as proposed. In addition, it incorporates by reference its statement of willingness to reimburse Vermillion Radio for the reasonable expenses incurred as a result of modifying its facilities to Channel 292A.

3. Vermillion Radio opposes allotment of the higher powered channel to Onawa and the modification of Station KVRF's license. It argues that a Class A station with 3,000 watts can adequately serve Onawa, with its population of 3,154 persons. Vermillion Radio further contends that the purpose of seeking a Class C1 allotment is not to better serve Onawa but to enable the station to serve the nearby larger community of Sioux City, Iowa. It also opposes the modification of Station KVRF's license. Vermillion Radio states that it has secured financing based on the station continuing to operate on Channel 272A until April 1, 1990, when its license is due for renewal, and that the financing may be withdrawn if it is forced to change channel prior to that date. Further, it submits that the actual impact of the change in channel and what constitutes fair reimbursement cannot be determined without an independent impact study which takes into account loss of listenership and loss of advertising revenue caused by listener confusion. This listener confusion will be heightened if Station KOOO is modified to Channel 272C1, according to Vermillion Radio, because the signals of the two stations will now overlap. Therefore, it believes

that Station KVRF should not be forced to change its frequency with reimbursement based only on the physical cost of the change.

4. Based on the record before us, we believe the public interest would be served by substituting Channel 272C1 for Channel 272A at Onawa, Iowa, and substituting Channel 292A for Channel 272A at Vermillion, South Dakota, since it could enable Station KOOO to expand its coverage area. We also find that Vermillion Radio has not raised a substantial and material question of fact which would require a hearing on the modification of its license to specify Channel 292A. Petitioner has stated its willingness to reimburse Vermillion Radio for the reasonable costs associated with the change of channel. The reimbursement of expenses, which is not limited solely to the cost of equipment changes, is governed by the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967). It is expected that petitioner and Vermillion Radio will negotiate in good faith as to the extent of reimbursement to which Vermillion Radio is entitled. As to Vermillion Radio's argument that it should not be forced to change channel prior to the expiration of its license, the Commission has held that the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of a new or expanded service at another community. See, e.g., *Marietta, Ohio, and Ravenswood, WV*, 2 FCC Rcd 4681 (1987), *Albany, NY et al.*, 2 FCC Rcd 4300 (1987), 3 FCC Rcd 4681 (1987), and *Mayville and Wickliffe, Ky., et al.*, 48 RR 2d 1232 (1981). As to Vermillion Radio's concern over the overlap of the two stations, we note that the two stations will be operating 20 channels apart.

5. Channel 272C1 can be allotted to Onawa, Iowa, in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOO's present transmitter site. Channel 292A can be allotted to Vermillion, South Dakota, in compliance with the Commission's minimum distance separation requirements and can be used at Station KVRF's present transmitter site.¹ As proposed, we shall modify petitioner's permit for Station KOOO to specify operation on Channel 272C1 and Vermillion Radio's license for Station KVRF to specify operation on Channel 292A.

6. 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 **March 6, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Onawa, Iowa	272C1
Vermillion, South Dakota	292A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Barnco for Station KOOO, Onawa, Iowa, IS MODIFIED to specify operation on Channel 272C1, in lieu of Channel 272A, 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).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Vermillion Radio, Inc. for Station KVERF, Vermillion, South Dakota, IS MODIFIED to specify operation on Channel 292A in lieu of Channel 272A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KVERF's license, BLH-3848, except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-3848, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KVERF, as follows: Vermillion Radio, Inc., P.O. Box 282, Vermillion, South Dakota 57069.

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

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

¹ The coordinates for Channel 272C1 at Onawa are North Latitude 42-01-41 and West Longitude 96-11-11. The coordinates for Channel 292A at Vermillion are North Latitude 42-47-32 and West Longitude 97-00-03.