

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-137
Table of Allotments,)	RM-8823
FM Broadcast Stations.)	
(Negaunee, Michigan))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 4, 1996

Released: October 11, 1996

By the Chief, Allocations Branch:

1. At the request of Todd Stuart Noordyk ("Noordyk"), the Commission has before it for consideration the Notice of Proposed Rule Making, 61 FR 35705, July 8, 1996, requesting the allotment of Channel 270A at Negaunee, Michigan, as the community's second FM broadcast service. Noordyk further requested that if Channel 270A is allotted to Negaunee, he be allowed to amend his pending application to specify operation on Channel 270A in lieu of Channel 258A. Noordyk filed comments in support of the proposal and reaffirmed his intention to apply for Channel 270A, if allotted with cut-off protection. No other comments were received.

2. As indicated in the Notice, the allotment of Channel 270A will eliminate the mutual exclusivity between two cut-off applications for a new class A FM channel at Negaunee, Michigan, and avoid the need for a comparative hearing. The Commission is currently unable to designate these applications for a comparative hearing or otherwise resolve these mutually exclusive applications. See Bechtel v. Federal Communications Commission, 10 F.3d 875 (D.C. Cir. 1993). Therefore, the Notice also proposed to allow Noordyk to amend his application to specify operation on Channel 270A and retain cut-off protection. In the event there were additional expressions of interest, the Notice indicated there was an additional Class A channel available at Negaunee.¹

3. We believe the public interest would be served by allotting Channel 270A to Negaunee, Michigan, since it could provide a second local service to the community and avoid the need for a comparative hearing. See Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1995); and Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11927 (1995). A staff engineering analysis has determined that Channel 270A can be

¹ Channel 250A could be allotted to Negaunee at coordinates 46-30-18 and 87-36-24.

allotted to Negaunee in compliance with the Commission's minimum distance separation requirements at Noordyk's specified site.² Since Negaunee is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. In view of the fact that there are no other timely filed expressions of interest for a class A channel at Negaunee, we will allow Noordyk to amend his application (951013MB) to specify operation on Channel 270A in lieu of Channel 258A and retain cut-off protection.

4. Accordingly, pursuant to the authority found 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 November 25, 1996, 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:

<u>Community</u>	<u>Channel No.</u>
Negaunee, Michigan	258A, 270A

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

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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

² The coordinates for Channel 270A at Negaunee are 46-28-18 and 87-36-55.