

**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. 01-65
FM Broadcast Stations.)	RM-10078
(Emmetsburg, Sanborn and Sibley, Iowa,)	RM-10188
and Brandon, South Dakota))	RM-10189
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 24, 2008

Released: May 22, 2009

By the Commission: Commissioner Copps issuing a statement; Commissioner Adelstein concurring and issuing a statement.

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by Saga Communications of Iowa, LLC (“Saga Communications”) directed to the *Memorandum Opinion and Order* in this proceeding.¹ Jim Dandy Broadcasting, Inc. (“Dandy Broadcasting”) filed an Opposition to Application for Review and Saga Communications filed a Reply to Opposition. For the reasons discussed below, we deny the Application for Review.

II. BACKGROUND

2. At the request of Eisert Enterprises, Inc., former licensee of Station KDWD (formerly KEMB), Channel 261A, Emmetsburg, Iowa, the Commission adopted a *Notice of Proposed Rule Making* proposing the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the Station KDWD license to specify operation on Channel 261C3.² In response to the *Notice*, Saga Communications filed a Counterproposal proposing the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota. The *Report and Order* concluding the *Notice of Proposed Rule Making* substituted Channel 261C3 for Channel 261A at Emmetsburg and modified the Station KDWD license to specify operation on Channel 261C3.³ That action was premised on the fact that this upgrade would, on the basis of initial staff calculations, provide additional service to 29,029 persons while upgrading the vacant Brandon allotment would provide additional service to 24,614 persons. In the *Memorandum Opinion and Order*, the staff denied a Petition for Reconsideration filed by Saga

¹ *Emmetsburg, Sanborn, and Sibley, Iowa, and Brandon, South Dakota*, Memorandum Opinion and Order, 19 FCC Rcd 3460 (MB 2004) (“*Memorandum Opinion and Order*”).

² *Emmetsburg and Sibley, Iowa*, Notice of Proposed Rule Making, 16 FCC Rcd 4932 (MMB 2001). Dandy Broadcasting is now the licensee of Station KDWD.

³ *Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota*, Report and Order, 17 FCC Rcd 18308 (MMB 2002) (“*Report and Order*”).

Communications disputing the respective population totals. In doing so, the staff concluded, based on newly released 2000 U.S. Census data, that the decision favoring the upgrade at Emmetsburg was correct.

3. In its Application for Review, accompanied by three engineering exhibits, Saga Communications again contends that upgrading the Brandon allotment would, using 2000 U.S. Census data, result in additional service to 27,274 persons while upgrading the Emmetsburg allotment would provide additional service to 24,939 persons. As such, Saga Communications contends that the Brandon upgrade should have been the preferred allotment.⁴

III. DISCUSSION

4. We deny the Application for Review. As the staff explained in denying reconsideration, the Media Bureau conducted an engineering review of the respective proposals using 2000 U.S. Census block group centroid data which became available after the release of the *Report and Order* in this proceeding. Based on this data, the staff upheld the Emmetsburg upgrade. We have carefully and independently reviewed these population calculations. Although the *Memorandum Opinion and Order* contains several arithmetic errors,⁵ we conclude that the award of the allotment to Emmetsburg was proper. Based on 2000 U.S. Census block group centroid data, we have confirmed that the proposed upgrade at Emmetsburg would result in additional service to 29,029 persons. This calculation is based upon existing service to 24,961 persons and a proposed service to a total of 53,990 persons. In comparison, the proposed upgrade at Brandon would result in additional service to 24,614 persons. This calculation is based upon the current allotment at Brandon serving 159,139 persons and the proposed Class C3 allotment serving 183,753 persons.⁶ As discussed below, these calculations are based upon a presumption of uniform terrain and each Class C3 facility operating at maximum facilities.⁷

5. We have also reviewed the three engineering exhibits that were attached to the Application for Review. According to these exhibits, the Brandon upgrade of a vacant allotment will serve between 1,590 and 2,386 more persons than the Station KDWD upgrade at Emmetsburg and, therefore, the staff action should be reversed. We disagree for two reasons. First, these exhibits compare the number of persons within the 60 dBu contour of a Brandon Class C3 allotment at maximum facilities to the number of persons within the 60 dBu contour as now set forth in the Station KDWD construction permit to implement the Class C3 upgrade (File No. BPH-20021113AAS).⁸ The fact that Station KDWD implemented its Class C3 upgrade at slightly less than maximum facilities does not warrant revisiting the *Report and Order* which, consistent with established policy, compared the two competing proposals on

⁴ See *Revision of FM Allotment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982); see also *Greenup, Kentucky, and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493 (1991).

⁵ The *Memorandum Opinion and Order* erroneously states that the *Report and Order* concluded that the Emmetsburg proposal population gain would be 28,607 (rather than 29,029) and that the Brandon proposal would serve an additional 26,223 (rather than 24,614). In addition, the *Memorandum Opinion and Order* miscalculated the Emmetsburg population gain using 2000 Census data by incorrectly subtracting current service (24,961) from the proposed service (53,990), *i.e.* stating that the population gain would be 28,929 rather than 29,029.

⁶ We recognize that 1990 and 2000 Census data calculations have yielded identical results. It is not possible to replicate the 1990 calculations at this time.

⁷ See *Caldwell, College Station and Gause, Texas*, Memorandum Opinion and Order, 15 FCC Rcd 3322 (2000); see also *Greenup, Kentucky, and Athens, Ohio*, *supra*.

⁸ We note that the Emmetsburg allotment would also prevail, *arguendo*, on the basis of its permitted facilities, which will serve 53,975 persons, only 15 fewer persons than would be served by maximum facilities.

the basis of maximum facilities.⁹ Because it is not possible to predict the facilities or transmitter site that will ultimately be used to implement an allotment proposal, this is a reasonable means to compare mutually exclusive proposals. We decline to disturb the determination reached earlier in this proceeding based on the facilities specified in a subsequently filed application. In this regard, there is no assurance that the ultimate permittee of the Brandon allotment would be able or willing to implement the allotment at maximum facilities or at the transmitter site specified in this rulemaking proceeding.

6. Secondly, the Saga calculations for the Station KDWD Class C3 upgrade at Emmetsburg are based on “actual terrain” whereas the calculations for the Brandon upgrade are based on uniform terrain. On the basis of actual terrain, the engineering exhibits state that the Class C3 upgrade at Emmetsburg will serve between 49,130 and 49,908 persons instead of the 53,990 persons presuming uniform terrain. Even if Saga Communications had submitted these engineering exhibits earlier in the proceeding, they would not have been considered. We make our determination as to the area that would receive a certain signal strength on the basis of the standard FM propagation signal methodology set forth in Section 73.313(a) of the rules. In developing this methodology, the Commission assumed “uniform terrain.” Uniform terrain is the average terrain found in all areas of the United States, excluding sharp variations such as ridges and valleys. The F(50,50) curves, used to determine the propagation of the FM signal, assume a terrain variation of 50 meters along radials measured between 3 and 16 kilometers from the transmitter site. In order to use an alternate propagation methodology, Section 73.313(e) of the rules requires that the terrain vary widely from the 50 meter value incorporated into the standard prediction methodology. In this instance, no showing has been submitted to demonstrate the required variation. In the absence of such a submission, Section 73.313(a) must be used to calculate signal strengths.¹⁰

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Saga Communications of Iowa, LLC IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ See *Greenup, Kentucky, and Athens, Ohio*, Report and Order, 2 FCC Rcd 4319 (MMB 1987), *aff'd in relevant part*, 4 FCC Rcd 3843 (MMB 1989), *aff'd in relevant part*, 6 FCC Rcd 1493 (1991), *appeal dismissed sub nom. WATH, Inc. v. FCC*, D.C. Cir. No. 91-1268 (September 26, 1991).

¹⁰ See *Elkins, West Virginia, Mountain Lake Park and Westernport, Maryland*, Memorandum Opinion and Order, 7 FCC Rcd 5527 (MMB 1992); *Saltville, Virginia, and Jefferson, North Carolina*, Memorandum Opinion and Order, 11 FCC Rcd 5234 (MMB 1996); *Harrisburg and Albemarle, North Carolina*, Memorandum Opinion and Order, 11 FCC Rcd 2511 (MMB 1996), *review denied*, 15 FCC Rcd 24296 (2000).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota, MM Docket No. 01-65, et al.; Applications of Kidd Communications for a Construction Permit for a New AM Station at Truckee, California, Pamplin Broadcasting-Oregon, Inc. for a Construction Permit for a New AM Station at Jacksonville, Oregon, File Nos. BNP-20000201AFK and 20000131ABP; Royce International Broadcasting Co., Application for a New AM Broadcast Station at Folsom, California, File No. BP-19970829AA, et al.

I have discussed previously the need to revisit our radio allotment priorities in order to ensure that we are meeting our statutory obligation to provide “a fair, efficient, and equitable distribution of radio licenses.”¹ Section 307(b) means that rural as well as urban communities are entitled to a fair distribution of service. I am concerned, however, that our existing allotment rules may unduly favor urban applicants by awarding, for instance, a dispositive preference to proposals that serve the greater number of people—even if that number is relatively small. The end result is that rural applicants often never even get the chance to bid at auction because the urban applicants are awarded a dispositive preference, typically under the catch-all priority for “other public interest matters.”

I am pleased that my colleagues have agreed to examine our radio allotment and assignment criteria as part of the recently released Rural Radio Service Notice of Proposed Rulemaking.² In the meantime, these cases adhere to current precedent and I therefore accept the results.

¹See 47 U.S.C. § 307(b); See also *Concurring Statement of Commissioner Michael J. Copps, In re Applications of Jeffrey B. Bate for a New AM Broadcast Station at Mesquite, Nevada and Jeffrey Eustis for a New AM Broadcast Station at Johnstown, Colorado, and In re Applications of Jeffrey B. Bate for a New AM Broadcast Station at St. George, Utah and Andrew Johnson for a New AM Broadcast Station at Winchester, Nevada.*

² *Policies to Promote Rural Radio Service and Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, FCC 09-30, (rel. Apr. 20, 2009).

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota), MM Docket No. 01-65.*

I concur in this item, because I am disturbed by the Commission's decision to grant one allotment proposal over another based solely on the population differential of the two competing proposals.

While a population differential should indeed be one factor in our decision-making, it should not be the sole determinative factor. Service to the local community, for example, should be a factor as well. After all, the point of this exercise is to advance the key objectives of Section 307(b) and to promote localism.