

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-133
Table of Allotments,) RM-9523
FM Broadcast Stations.)
(Evergreen, Montana)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 17, 2000

Released: May 26, 2000

By the Chief, Allocations Branch:

1. In response to a petition filed by Mountain West Broadcasting (“Mountain West”), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 6857 (1999), requesting the allotment of Channel 230A at Evergreen, Montana. Mountain West filed comments in which it reaffirmed its interest in Channel 230A at Evergreen. The Battani Corporation (“Battani”) filed comments.

2. In response to Mountain West’s request, a Notice was issued proposing the allotment of Channel 230A at Evergreen. The Notice pointed out that Evergreen is a Census Designated Place with a population of 4,109 people located in Flathead County, utilizing a Kalispell post office and zip code. In comments, Mountain West did commit to constructing a station in Evergreen and by reference, resubmitted the facts and comments presented in the original petition. Battani argues in its comments that Evergreen is not a community for allotment purposes but simply a neighborhood contiguous to Kalispell, Montana. Battani states that Evergreen has no city government, local police, library, independent school system, post office or zip code and that there are proposals to annex the area into the city of Kalispell.¹

3. Based on the totality of the evidence submitted by Mountain West, we believe it has failed to establish that Evergreen qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel.² Evergreen is a Census Designated Place (“CDP”)

¹ Battani provided a statement and the following information from a resident of Flathead County, Ronald Rose, stating that Evergreen is without its own government, separate school system, local police or any other municipal functions. Evergreen does not have a library, Chamber of Commerce or a separate newspaper. Mr. Rose further stated that Evergreen is a neighborhood adjacent to Kalispell and that there have been proposals to annex the area into the city of Kalispell. In short, Evergreen is part of the larger community of Kalispell according to Mr. Rose.

as defined by the U.S. Census. The designation of an area as a CDP raises the presumption that an area is a community for allotment purposes and that presumption is rebuttable. See e.g., East Hemet, California, et. al., 4 FCC Rcd 7895 (1989); and Hannahs Mill and Milledgeville, Georgia, 7 FCC Rcd 3944 (1992). Mountain West neglected to provide any criteria supporting community status other than to state that Evergreen has a population of 4,109 people and is located in Flathead County, the closest FM allotment is located 4 kilometers away in Kalispell and that the allotment would provide an outlet for local self expression. The Commission has, in past cases, rejected claims of community status where a connection has not been shown between political, social and commercial organizations and the community in question. Mountain West did not address or rebut the Battani arguments relating to the community status of Evergreen. Although Evergreen appears to have some of the elements of a community, we believe that the record in this proceeding is insufficient to find that Evergreen is a community for allotment purposes.³ Therefore, we will not allot Channel 230A to Evergreen, Montana.

4. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Mountain West Broadcasting to allot Channel 230A to Evergreen, Montana, IS DENIED.

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

² While we realize that we did not specifically request information regarding the community status of Evergreen in the Notice, we believe that Mountain West had adequate opportunity to respond to this issue in response to Battani's comments.

³ Mountain West could have provided the following type of evidence which supports community status such as the names of any businesses which contain "Evergreen" in their names and have Evergreen addresses rather than Kalispell addresses, excerpts from a telephone book showing Evergreen's separate telephone exchange, a list of industries, specific names and addresses of churches in Evergreen, affidavits from residents of Evergreen, name and address of the mayor or council members, evidence that rural residents view Evergreen as a center for shopping and medical services, but failed to do so.

6. For further information concerning this proceeding, 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