

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-288
Table of Allotments,)	RM-9708
FM Broadcast Stations.)	RM-9801
(Sister Bay, Wisconsin and)	
Escanaba, Michigan) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 8, 2000

Released: November 17, 2000

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Michael J. Mesic (“Mesic”), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 15417 (1999), requesting the allotment of Channel 286A at Sister Bay, Wisconsin, as that community’s first local service. Mesic and WTRW Incorporated (“WTRW”) filed comments supporting an FM allotment at Sister Bay. Comments were also filed by Midwest Dimensions, Inc. (“Midwest”). KMB Broadcasting, Inc. (“KMB”) filed a counterproposal.² Reply comments were filed by Mesic and Midwest.

2. KMB counterproposed the substitution of Channel 284C for Channel 284C1 at Escanaba, Michigan, and modification of the license for Station WYKX to specify operation on Channel 284C.³ KMB states that it has planned for several years to upgrade its facilities but was unable to proceed until the Michigan Aeronautics Commission (“MAC”) approved its proposed construction for a tower. According to KMB, it now has MAC approval for a potential site. For purposes of this counterproposal, KMB states that it has selected a hypothetical site that meets the Commission’s spacing requirements and enables Station WYKX to place the required 70 dBu signal over the entire community of Escanaba. KMB points out that it has a compelling need for a Class C facility as Escanaba is located in the Upper Peninsula which is sparsely populated compared to other areas of the country. KMB states that it will apply for authority to upgrade its facilities for a Class C station should its proposal be granted.

¹ The community of Escanaba, Michigan, has been added to the caption.

² The counterproposal filed by KMB (RM-9801) was put on public notice on January 11, 2000 (Report No. 2378).

³ Station WYKX, Escanaba, was downgraded from Class C to Class C1 by cancellation of BPH-870302NI as modified by BMPH-911120IE on October 21, 1998. See 2 FCC Rcd 2124 (1987).

3. Midwest, licensee of Station WPCCK, filed comments proposing the allotment of Channel 295A rather than Channel 286A at Sister Bay. Midwest points out that it is involved in a proceeding to upgrade Station WPCCK by substituting Channel 285C3 for Channel 285A at Kaukauna, Wisconsin, and reallocating the channel to Denmark, Wisconsin. Midwest argues that the use of Channel 295A at Sister Bay in lieu of Channel 286A would resolve any interference or short spacing concerns for Midwest operating on Channel 285C3 at Denmark. Mesic responded to Midwest, objecting to the allotment of Channel 295A at Sister Bay because of limited site locations for tower placement for Channel 295A. Mesic contends that allotment of Channel 286A at Sister Bay is the most feasible in terms of timely construction and site locations. Mesic points out that with the use of an alternate site for Channel 286A at Sister Bay, Midwest's concerns could be accommodated at Kaukauna, and Station WYKX, Escanaba, could be upgraded as counterproposed by KMB. On February 2, 2000, Midwest withdrew its objection to the allotment of Channel 286A at Sister Bay since Mesic has requested an alternate site which protects the Kaukauna proposal.⁴

4. Conflicting proposals, such as have been filed in this proceeding, are generally considered under the guidelines set forth in Revision of FM Assignment and Policies and Procedures, 90 FCC Rcd 2d (1982).⁵ However, in this instance, since there are alternate sites for Channel 286A at Sister Bay and Channel 284C at Escanaba, which remove the conflict, there is no need to compare the communities. Therefore, after consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of an FM channel at Sister Bay, Wisconsin, as a first local service and the substitution of channels at Escanaba to allow for expanded service to sparsely populated remote areas. As proposed in the Notice, Channel 286A can be allotted to Sister Bay, Wisconsin, in compliance with the Commission's spacing requirements at an alternate site as requested by Mesic.⁶ In response to the counterproposal filed by KMB, we shall substitute Channel 284C for Channel 284C1 at Escanaba, Michigan, at a site 39.1 kilometers (24.3 miles) north of Escanaba.⁷ We recognize that this site is slightly different from the site requested by KMB. However, since KMB has proposed a change in the reference coordinates for Station WYKX in its counterproposal, it has demonstrated a willingness to relocate. Further, since KMB states that it used a theoretical site for purposes of its counterproposal and the record gives no indication that this site represents anything other than a mere preference, we do not believe the selected site will hinder KMB's ability to upgrade Station WYKX to a full Class C facility. Therefore, for purposes of this Report and Order, a site has

⁴ Action on February 16, 2000, in MM Docket No. 99-36, substituted Channel 285C3 for Channel 285A at Kaukauna, Wisconsin, reallocated Channel 285C3 to Denmark and modified the license for Station WPCCK accordingly. See 15 FCC rcd 4338 (2000).

⁵ The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁶ The coordinates for Channel 286A at Sister Bay are 45-14-19 and 87-07-18.

⁷ The coordinates for Channel 284C at Escanaba are 46-05-31 and 87-09-50.

been used for Station WYKX that will accommodate the allotment of Channel 286A at Sister Bay as well as the allotment of Channel 284C at Escanaba. See, e.g., Greenville, Texas, 6 FCC Rcd 6048 (1991) (further site restriction imposed where upgrade proponent has already proposed to relocate its transmitter site). In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license for Station WYKX, Escanaba, Michigan, to specify operation on Channel 284C in lieu of Channel 284C1. Canadian concurrence has been obtained for the allotment of Channel 286A at Sister Bay and Channel 284C at Escanaba.

5. 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 January 2, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Escanaba, Michigan	246C, 284C
Sister Bay, Wisconsin	286A

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KMB Broadcasting, Inc. for Station WYKX, Escanaba, Michigan, IS MODIFIED to specify operation on Channel 284C in lieu of Channel 284C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. A filing window for Channel 286A at Sister Bay, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KMB Broadcasting, Inc., licensee of Station WYKX, is required to submit a rule making fee in addition to the fee required for the application to effect the substitution of Channel 284C for Channel 284C1 at Escanaba, Michigan.

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

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channels 286A, Sister Bay, Wisconsin, or 284C, Escanaba, Michigan, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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