

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

MM Docket No. 86-491

In the Matter of

Amendment of Section 73.202(b),	RM-5557
Table of Allotments,	RM-5396
FM Broadcast Stations.	RM-6538
(St. James and Blue Earth, Minnesota)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 22, 1988; Released: February 1, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 52 FR 3655, February 5, 1987, issued in response to two separate petitions for rule making. The first petition was filed by Rogers Broadcasting, Inc. (Rogers) requesting the substitution of FM Channel 283C2 for Channel 285A at St. James, Minnesota, and modification of its license for Station KXAX, to specify operation on Channel 283C2. The second petition was filed by Minn-Iowa Christian Broadcasting, Inc. (Minn-Iowa), requesting the substitution of FM Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modification of its license for Station KJLY(FM), to specify operation on Channel 283C2. Rogers filed comments. Minn-Iowa filed comments and a counterproposal.¹ St. James Broadcasting Co. responded to the counterproposal. Rogers filed a statement on December 6, 1988, withdrawing its request to modify its license to specify operation on Channel 283C2.

2. The *Notice* proposed the alternate allotments of Channel 283C2 to St. James, Minnesota, or to Blue Earth, Minnesota. Since Blue Earth and St. James are approximately 37 kilometers apart instead of the required 190 kilometers, both of the proposed allotments are not possible. A first wide coverage area station could be provided to either community. St. James has a population of 4,346 and Blue Earth has a population of 4,132.²

3. Rogers, in its comments, acknowledges the conflict with the petition of Minn-Iowa. Rogers states that its engineering study shows that a Class C2 channel is available to each station. Rogers asserts, however, that each station can only upgrade to a Class C2 channel if both stations upgrade to a Class C2 channel. Specifically, Rogers states that if Channel 283C2 is allotted to Blue Earth as Minn-Iowa requests, and the license for Minn-Iowa's Station KJLY(FM) modified from Channel 265A to Channel 283C2, then Channel 263C2 could be made available to St. James and the license for Roger's Station KXAX modified from Channel 285A to Channel 263C2, because the conflicts between Minn-Iowa's present Channel 265A and Channel 263C2 at St. James would be resolved. In

addition, Rogers argues that Channel 283C2 can be allotted to Blue Earth for use by KJLY(FM) only if the license for its Station KXAX, St. James, is modified to specify operation on Channel 263C2. Rogers contends that both allotments must be changed and both station licenses modified at the same time, and thus, there should not be an opportunity for other parties to express interest in either channel.

4. Minn-Iowa, in its comments and counterproposal, states that in order to accommodate the upgrading plans of both Station KJLY(FM) at Blue Earth and Station KXAX at St. James, Minn-Iowa and Rogers have agreed, subject to Commission authorization, to an exchange of their present channels simultaneously with the upgrade by each station onto its new adjacent channel. Minn-Iowa argues that these allotments should not be subject to other expressions of interest for operation in the respective communities of license because the proposed allotments constitute a "contingent swap" that should be treated like an adjacent or co-channel upgrade, in accordance with Section 1.420(g) of the Commission's Rules. *See*, 51 FR 20290 (June 4, 1986). A staff engineering analysis indicated that although Channel 263C2 at St. James would conflict with existing Channel 265A at Blue Earth if it is used at KXAX's present transmitter site, Channel 263C2 can be allotted to St. James, at the city reference coordinates, and would fully protect the presently licensed facilities of KJLY(FM) at Blue Earth. Therefore, because Channel 263C2 can be allotted to St. James without any changes in existing facilities, we did not treat the proposal for Channel 263C2 at St. James as part of a contingent swap. Instead, we treated the proposal as we would any other proposal for a non-adjacent channel upgrade. Specifically, in the public notice announcing the counterproposal, we provided an opportunity for the filing of competing expressions of interest in Channel 263C2 at St. James.

5. St. James Broadcasting Co. filed comments in response to the counterproposal indicating its intention to file an application for Channel 263C2 at St. James. In accordance with Section 1.420(g) of the Rules, we could only modify the license for Station KXAX, St. James, on the non-adjacent channel if there were no other expressions of interest for Channel 263C2 or if another equivalent channel were available. A staff analysis confirms that there is no other Class C2 channel available for St. James at this time. Therefore, we cannot modify the license for Station KXAX as requested in the counterproposal. Channel 263C2 can be allotted to St. James in compliance with the Commission's spacing requirements and a window opened for competing applications. Channel 263C2 at St. James does not conflict with existing Channel 265A at Blue Earth. In view of the fact that Rogers Broadcasting Co. has withdrawn its request for modification of its license and intends to continue operation on Channel 285A, no further analysis or a comparative study is necessary.

6. Based on the above information, we believe the public interest would be served by the substitution of Channel 283C2 for Channel 265A At Blue Earth, Minnesota, and modification of the license for Station KJLY(FM) to specify operation on Channel 283C2. Channel 283C2 can be allotted to Blue Earth in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at Station KJLY(FM)'s current site.³ The *Notice* indicated a conflict

with Station KTOF, Cedar Rapids, Iowa. Station KTOF now has a construction permit for Channel 283C at a site that does not conflict with Channel 283C2 at Blue Earth. We have authorized modification of the license for Station KJLY(FM) to specify operation on Channel 283C2 in accordance with Section 1.420(g) of the Commission's Rules since there were no other expressions of interest for a channel at Blue Earth. In response to comments filed by St. James Broadcasting Co. we shall allot Channel 263C2 to St. James, Minnesota, and open a window for competing applications. Channel 263C2 can be allotted to St. James in compliance with the Commission's spacing requirements.⁴

7. 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 20, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Blue Earth, Minnesota	283C2
St. James, Minnesota	263C2, 285A

8. IT IS FURTHER ORDERED, That the petition filed by Rogers Broadcasting Inc. to substitute Channel 283C2 for Channel 285A at St. James, Minnesota, IS DISMISSED (RM-5396).

9. IT IS FURTHER ORDERED, That the counterproposal filed by Minn-Iowa Christian Broadcasting, Inc., IS DISMISSED (RM-6538).

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KJLY(FM), Blue Earth, Minnesota, IS MODIFIED to specify operation on Channel 283C2, in lieu of Channel 265A 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.

(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.

11. The window period for filing applications for Channel 263C2 at St. James, Minnesota, will open on **March 21, 1989**, and close on **April 20, 1989**.

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

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

¹ Public Notice of the counterproposal was given on October 3, 1988, Report No. 1751 (RM-6538).

² The population figures are taken from the 1980 census.

³ The coordinates for Channel 283C2 at Blue Earth are 43-39-41 and 94-06-29.

⁴ The coordinates for Channel 263C2 at St. James are 43-59-00 and 94-37-48.