

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

In the Matter of	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-53
Table of Allotments,	)	RM-9823
FM Broadcast Stations.	)	
(Detroit Lakes and Barnesville,	)	
Minnesota)	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: March 15, 2000**

**Released: March 24, 2000**

**Comment Date: May 15, 2000**

**Reply Date: May 30, 2000**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of T&J Broadcasting, Inc. ("T&J"), proposing the reallocation of Channel 236C1 from Detroit Lakes, Minnesota, to Barnesville, Minnesota, and modification of its license for Station KFGX(FM) to specify Barnesville as the community of license. T&J stated its intention to apply for Channel 236C1 at Barnesville if the reallocation is granted.

2. T&J filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, T&J states that Channel 236C1 may be allotted to Barnesville consistent with the Commission's separation requirements, placing a city-grade signal over the entire community of Barnesville. Further, T&J states that the reallocation of Channel 236C1 to Barnesville is mutually exclusive with the current use of Channel 236C1 at Detroit Lakes, will provide a first local service at Barnesville and that local service will continue to be provided to Detroit Lakes by Stations KDLM(AM) and KRCQ(FM). T&J states that it intends to relocate its transmitter site and that the anticipated site will provide full city grade coverage to the Barnesville community. T&J also states that the reallocation of Channel 236C1 to Barnesville at its new transmitter site will provide a 70 dBu signal over most of the Fargo, North Dakota Urbanized Area and has provided a showing that Barnesville is independent of the Fargo Urbanized Area.

3. T&J provided the following information to demonstrate that Barnesville is independent of the Fargo North Dakota Urbanized Area pursuant to the criteria set forth in Faye and Richard Tuck (“Tuck”), 3 FCC Rcd 5374 (1988).<sup>1</sup> As to signal coverage, T&J states that the 70 dBu contour will cover most of the Fargo Urbanized Area and that Barnesville is located approximately 25 miles from Fargo. T&J points out that the community of Barnesville does not fall within the Fargo Urbanized Area boundaries. T&J states that Barnesville is not an appendage of Fargo but exists as a unique, self-sufficient community deserving of a first local service preference.

1) The extent to which community residents work in the larger metropolitan area rather than the specified community. T&J states that Barnesville is home to a myriad of local businesses which employ primarily local residents. For example, over 100 people are employed at the Barnesville Care Center, 87 people work for the Barnesville School District, 33 people are employed with the Barnesville City Government and many other Barnesville residents are employed at local restaurants, grocery stores, clothing shops, and the Barnesville Area Clinic and various physicians’ offices. Because of the abundance of businesses that exist in Barnesville, residents have the option of working in the community itself, rather than commuting to Fargo.

2) Whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests. T&J states that Barnesville has its own weekly newspaper, The Barnesville Record Review, published solely for Barnesville. This weekly publication carries news and advertising of special interest to the residents of Barnesville, such as coverage of the community’s annual Potato Days Festival and features on community leaders

3) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area. According to T&J, business owners, residents and community leaders in Barnesville perceive their community as being separate from Fargo. Barnesville residents can have all of their needs met without leaving their community because of the many local businesses and services, which include grocery and clothing stores, churches, a police department, medical clinic, as well as doctors, dentists and lawyers offices. T&J points out that local residents and over 30 community organizations join in sponsoring local events and festivities throughout the year that take place in Barnesville and are separate from Fargo.

4) Whether the specified community has its own local government and elected officials.

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<sup>1</sup> The independent factors set forth in Tuck are 1) the extent to which the community residents work in the larger metropolitan area rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; and 5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified community and the central city are part of the same advertising market; and 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries.

T&J states that Barnesville has its own local government and elected officials. The Barnesville City Government is comprised of a mayor and six member council, who are all elected by Barnesville residents. The Barnesville government employs 33 residents of the community, has an administrative staff consisting of a city administrator, finance officer, telephone operations manager, records manager, customer service representative, billing/data entry clerk and a city attorney.

5) Whether the smaller community has its own telephone book provided by the local telephone company or zip code. Barnesville has its own zip code (56514) and its own branch of the U.S. Post Office. The city owns the local telephone company, providing local, long distance and internet access, which compiles a local telephone directory. T&J believes that the separate zip code and the telephone directory are further evidence of Barnesville's independence from Fargo.

6) Whether the community has its own commercial establishments, health facilities and transportation systems. T&J provides the following information in response to this factor. Barnesville is a full service community offering many goods and services from a wide variety of local commercial establishments, which include four grocery stores, convenience stores, clothing shops, a bakery, barber, motel, cleaning services, florists, dry cleaning, sporting goods stores, health club, auto body repair shops and eight restaurants. T&J explains that although Barnesville residents make use of the Dakota Hospital in Fargo, Barnesville has its own doctors and dentists, a clinic and a nursing home. In addition, Barnesville has its own municipal airport.

7) The extent to which the community and central city are part of the same advertising market. T&J states that it is feasible that advertisers in Fargo may target Barnesville residents but there are numerous small communities such as Sabin, Elmwood and Kurtz that are closer to Fargo than Barnesville that are likely more effective targets for advertisers than the residents of Barnesville. T&J believes that based upon the large number of businesses which maintain facilities in Barnesville, a separate advertising market most likely exists for Barnesville.

8) The extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries. According to T&J, Barnesville is self-sufficient and does not rely on Fargo for any of its municipal services. The community provides one-stop shopping with its own municipally owned and operated water source, sewer service, electric utility and local telephone company, local telecommunications service, cable tv company, garbage and recycling center. T&J adds that Barnesville has its own police department, volunteer fire department, EMT and ambulance service, schools, public library, several parks and camping sites, animal control services and a golf course.

4. We believe that T&J's proposal warrants consideration since the allotment of Channel 236C1 at Barnesville could provide the community with its first local aural service while not depriving Detroit Lakes of its sole local aural service. T&J has provided sufficient information to show that Barnesville is an independent community. Since T&J is proposing to change the

transmitter site for Station WKFGX(FM), a gain and loss study is required. A staff engineering analysis indicates that the loss area of Channel 236C1 at Detroit Lakes contains 50,105 people and covers approximately 6,270 square kilometers while the gain area of Channel 236C1 at Barnesville contains 17,431 people and covers approximately 6,270 square kilometers for a net loss of 32,674 people being served. Our analysis also indicates that there are several small sections of the loss area of Channel 236C1 at Detroit Lakes that would be left with less than five full-time services if Station KFGX(FM) is reallocated to Barnesville. T&J is requested to perform a gain and loss study as to the number of listeners who would be served by the new allotment and those who would lose the service provided from Station KFGX(FM)'s current transmitter site.<sup>2</sup> T&J is also requested to provide information concerning reception service in the loss area. Channel 236C1 can be allotted to Barnesville, Minnesota, in compliance with the Commission's spacing requirements at T&J's specified site.<sup>3</sup> Since Barnesville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment at Barnesville. As requested, we shall propose to modify the license of Station KFGX(FM) to specify operation on Channel 236C1 at Barnesville, Minnesota, as its new community of license. In accordance with the provisions of Section 1.420(I) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 236C1 at Barnesville.

5. In view of the fact that the proposed allotment would provide a first local service to Barnesville, Minnesota, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 236C1 to Barnesville. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Detroit Lakes and Barnesville, Minnesota, as follows:

Community	Channel No.	
	Present	Proposed
Barnesville, Minnesota	-----	236C1
Detroit Lakes, Minnesota	236C1, 272C2	272C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 15, 2000, and reply comments on or before May 30, 2000, and are advised to read the Appendix for the proper procedures. Comments

<sup>2</sup> The coordinates for Station KFGX(FM) at Detroit Lakes are 46-40-27 and 96-13-39.

<sup>3</sup> The coordinates for Channel 236C1 at Barnesville are 46-49-10 and 96-45-56.

should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

1. Pursuant to 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 PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed

with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.