

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 13-284
Table of Allotments,)	RM-11704
FM Broadcast Stations.)	
(Evart and Ludington, Michigan))	
)	
Stations WMLQ(FM), Manistee, Michigan,)	
(Facility ID No. 39787), and WMOM(FM),)	
Pentwater, Michigan (Facility ID No. 76507))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 24, 2014

Released: July 25, 2014

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making and Order to Show Cause*,¹ issued in response to a Petition for Rule Making (“Petition”) filed by Synergy Lakeshore Licenses, LLC (“Synergy”), licensee of Station WMLQ(FM), Manistee, Michigan. Comments were filed separately by Synergy; WGHN, Inc. (“WGHN”), the permittee for a new FM station at Ludington, Michigan; and Bay View Broadcasting, Inc. (“Bay View”), licensee of Station WMOM(FM), Pentwater, Michigan. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we grant the Petition and delete Channel 274A at Evart, Michigan and return the allotments at Pentwater, Manistee, and Ludington to their original channels.

2. **Background.** The *Notice* proposed the deletion of vacant Channel 274A at Evart and modification of Stations WMOM(FM), Pentwater, Michigan from Channel 242A to Channel 274A, and WMLQ(FM), Manistee, Michigan from Channel 282A to Channel 249A.² The *Notice* also proposed to modify WGHN’s construction permit from Channel 249A to Channel 242A at Ludington.³ To accommodate the channel changes, we issued an Order to Show Cause to Bay View as to why its license for

¹ See *Evart and Ludington, Michigan*, Notice of Proposed Rule Making and Order to Show Cause, 28 FCC Rcd 15965 (MB 2013) (“*Notice*”).

² In MB Docket 08-26, we allotted Channel 274A at Evart as a first local service. See *Evart and Ludington, Michigan*, Report and Order, 24 FCC Rcd 2584 (MB 2009) (“*Evart R&O*”). To accommodate the Evart allotment, we modified the license of Bay View for Station WMOM(FM), Pentwater, from Channel 274A to Channel 242A, and the license of Synergy for Station WMLQ(FM), Manistee, from Channel 249A to Channel 282A; and substituted Channel 249A for vacant Channel 242A at Ludington. Consistent with the Commission’s *Circleville* policy, the *Evart R&O* required that the ultimate permittee of Channel 274A at Evart reimburse both Bay View and Synergy for their reasonable costs of changing their frequencies. See *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159 (1967) (requiring that, whenever an existing station is ordered to change frequency to accommodate another station, the benefitting station must reimburse the affected station for its reasonable and prudent expenses) (“*Circleville*”).

³ WGHN was the successful bidder for Channel 249A at Ludington in Auction 94. See *id.* at 6983. WGHN was granted a long-form application for a construction permit on this channel on August 22, 2013. See File No. BNPH-20130722ACO.

Station WMOM(FM) should not be modified to specify Channel 274A in lieu of Channel 242A.⁴ It was not necessary to issue an Order to Show Cause to Synergy and WGHN because Synergy filed the Petition and requested the channel change and WGHN has voluntarily consented to the channel change.⁵

3. Additionally, the *Notice* sought comment on two reimbursement issues. First, if we delete Channel 274A at Evart and order the related channel changes discussed above, both WGHN and Bay View incurred application costs in filing these station modifications. We invited comment on whether they would seek reimbursement for their expenses, and if so, whether the expenses are reimbursable under *Circleville* and by whom. Second, if we retain Channel 274A at Evart and Station WMLQ(FM), Manistee, is required to change channel, we solicited comment on Synergy's suggestion of whether WGHN would consent to reimburse partially Synergy for the costs of its channel change. In this regard, Synergy notes that WGHN would be a benefitting party since it would not have to wait for the auctioning and licensing of the Evart allotment in order to commence operations at Ludington.

4. *Comments.* Synergy and WGHN filed comments supporting the deletion of Channel 274A at Evart, and the return of the allotments at Pentwater, Manistee, and Ludington to their original channels because it would expedite the activation of service at Ludington, and WGHN would not have to wait for Station WMLQ(FM) to change its channel. Synergy and WGHN agree that the Commission should require Roy Henderson, the original petitioner of the Evart allotment, to reimburse WGHN and Bay View for the costs that they incurred. Otherwise, Synergy states that the parties who have incurred expenses may need to simply absorb such expenses themselves.

5. Bay View also filed comments supporting the deletion of Channel 274A at Evart and the return of Station WMOM(FM) from Channel 242A to Channel 274A at Pentwater, Michigan. Bay View states that it would not oppose the Order to Show Cause because it has not changed its frequency. Bay View urges the Commission to restore the *status quo ante* MB Docket No. 08-26, delete all channel assignments made therein, and reinstate Channel 274A at Pentwater, Michigan.

6. **Discussion.** *Channel Deletion.* Absent of an expression of interest, we believe that the proposed channel deletion at Evart, Michigan will serve the public interest for several reasons.⁶ First, it will eliminate the issue of reimbursement for Station WMLQ(FM), which would no longer have to change channel. Second, the public interest would be served by expediting the activation of the Ludington allotment because WGHN would no longer have to wait for Station WMLQ(FM) to change channel. Third, the deletion of Channel 274A at Evart may create other opportunities in nearby communities for new FM allotments or upgrades of existing stations. Accordingly, we delete Channel 274A at Evart, return Stations WMLQ(FM), Manistee, and WMOM(FM), Pentwater to the channels that they were previously licensed on, and restore the original allotment at Ludington, Michigan.

7. *Reimbursement Issue.* We disagree with WGHN and Synergy that Roy Henderson should be required to reimburse the parties although he was the original Petitioner of the Evart allotment. In this regard, the *Evart R&O* ordered the ultimate permittee of Channel 274A at Evart to reimburse Synergy and

⁴ Subsequent to *Evart R&O*, Bay View has filed a construction permit for Channel 242A at Pentwater, File No. BPH-20121001AON.

⁵ See WGHN's Comments at 1-2.

⁶ Channel 274A at Evart, Michigan has been auctioned and considered unsold in Auction 94. See, e.g., *Cove and Daisy, Arkansas, et al.*, Notice of Proposed Rule Making, 26 FCC Rcd 12787 (MB 2011) (proposing the deletion of 20 vacant FM allotments in various communities that have been through the competitive bidding process); *Port Lions, Alaska, et al.*, Notice of Proposed Rule Making, 28 FCC Rcd 8465 (MB 2013) (proposing the deletion of six vacant allotments in various communities that have been through the auction process).

Bay View for the costs of changing their channels to accommodate the allotment at Evert. Although Bay View has filed a construction permit for Channel 242A at Pentwater, it states that Station WMOM(FM) still operates on its original Channel 274A at Pentwater. Synergy has not filed an application for Channel 282A, and Station WMLQ(FM) still operates on its original Channel 249A. Since we delete Channel 274A at Evert and return Stations WMLQ(FM) and WMOM(FM) to their original channels, we find that no party is responsible for reimbursement expenses. In regards to the Ludington allotment, WGHN has voluntarily consented to the channel change, so we conclude that no party is required to reimburse WGHN for the costs of filing an application to specify Channel 242A at Ludington.⁷

8. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

9. **Ordering clauses.** Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective, September 8, 2014, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Evert, Michigan	-----
Ludington, Michigan	242A

10. IT IS FURTHER ORDERED, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), that effective September 8, 2014, the Media Bureau's Consolidated Data Base System will reflect the following channel as reserved assignment for the listed stations: (1) Channel 274A in lieu of Channel 242A at Pentwater, Michigan for Station WMOM(FM); (2) Channel 249A in lieu of Channel 282A at Manistee, Michigan for Station WMLQ(FM).

11. IT IS FURTHER ORDERED, within 90 days of the effective date of this *Order*, WGHN, Inc. shall submit to the Commission a minor change application for a construction permit (Form 301).

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

13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

⁷ As stated in the *Notice*, the transmitter site specified in WGHN's construction permit for Channel 249A at Ludington is not fully spaced. WGHN is required to specify a rule-compliant site for Channel 242A at Ludington, Michigan.