

FCC MAIL SECTION

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

OCT 8 8 44 AM '92

MM Docket No. 92-3

In the Matter of

Amendment of Section 73.202(b), RM-7874
Table of Allotments, RM-7958
FM Broadcast Stations.
(Prineville and Sisters,
Oregon)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 17, 1992; Released: October 7, 1992

By the Chief, Allocations Branch:

1. At the request of Danjon, Inc. ("petitioner" or "Danjon"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 501 (1992), proposing the allotment of Channel 284A to Prineville, Oregon, as the community's second local FM service.² Comments were filed by the petitioner reiterating its intention to apply for the channel, if allotted.³ Schuyler H. Martin ("Martin") filed a counterproposal requesting the substitution of Channel 281C1 for Channel 281A at Sisters, Oregon, the modification of Station KPXA's construction permit to specify the higher class channel, and the allotment of Channel 271A instead of Channel 284A, to Prineville.⁴ Reply comments were jointly filed by The Confederated Tribes of the Warm Springs Reservation of Oregon, Highlakes Broadcasting Company, Central Oregon Broadcasting, Inc., Dolphin Communications, Inc., JJP Broadcasting, Inc., Oak Broadcasting, Inc., and Sequoia Communications ("the Commenters").⁵

2. Martin states that he will apply for Channel 281C1, if allotted to Sisters. Martin submits that Channel 281C1 can be allotted in compliance with the Commission's minimum distance separation requirements. While he requests

a site restriction 30 kilometers south of the community, he states that the entire community of Sisters will be within the station's 70 dBu contour.

3. The Commenters argue that petitioner's request for Channel 284A at Prineville is a sham proposal filed solely to accommodate the interests of Martin. Thus, they believe that Martin's proposal is "tainted" and request an investigation of the circumstances regarding the filing of both proposals before any possible grant of the counterproposal. The Commenters question petitioner's choice of Channel 284A, claiming that it is the least attractive channel available for allotment because of the need to impose a site restriction on its use. They point out that there are at least six other Class A channels available for allotment to Prineville, none of which requires a site restriction. However, requesting Channel 284A enables Martin to file its request to allot Channel 281C1 to Sisters as a counterproposal to an on-going proceeding, rather than as a new petition requiring the issuance of a Notice of Proposed Rule Making. This action enables Martin's proposal to be granted without providing an opportunity for the filing of counterproposals. To bolster this argument, the Commenters point out that the law firm representing Danjon in its MDS applications also represents Martin in this proceeding.

4. The Commenters also question the reasons given for Danjon's withdrawal of interest in the Prineville allotment. They contend that Danjon's claim that it was unaware of the fact that Prineville already received local aural transmission service from an AM and FM station lacks credibility since the existence of Highlake's stations is readily discernible from public information. They also question Danjon's statement that it is unwilling to spend additional monies to assess the availability of a transmitter site for a station operating on Channel 271A. They imply that no monies were spent in assessing the proposed Channel 284A transmitter site since the land owner had not been contacted about its use as a transmitter site.⁶ The Commenters recognize that the evidence contained in their pleading is "largely circumstantial." However, they contend that there is a strong suggestion that an abuse of the Commission's processes has taken place and urge an investigation of the circumstances surrounding the filings by Danjon and Martin.

5. We believe that the Commenters have not provided sufficient evidence to warrant an investigation of the circumstances surrounding the filing of either the petition or counterproposal. In fact, the Commenters acknowledge that its contentions are based on "largely circumstantial evidence."⁷ The Commenters have not shown that Danjon's request is anything more than a request for what

¹ The community of Sisters has been added to the caption.

² The *Notice* incorrectly stated that Channel 284A would be Prineville's first local FM service. We note that Station KIJK, Channel 236C1, is also allotted to Prineville.

³ On March 18, 1992, petitioner withdrew its interest in the allotment at Prineville and in accordance with Section 1.420(j) stated that no consideration had been received for the withdrawal. Since no other party expressed an interest in the allotment at Prineville, the proposal will be dismissed.

⁴ Public Notice of the filing of the counterproposal was given on April 2, 1992, Report No. 1883.

⁵ The Confederated Tribes of the Warm Springs Reservation of Oregon is the licensee of Stations KTWS(FM), Bend, Oregon, and KTWI(FM), Warm Springs, Oregon. Highlakes Broadcasting

Company is the licensee of Stations KRCO(AM) and KIJK-FM, Prineville, Oregon. Central Oregon Broadcasting, Inc., is the licensee of Stations KBND(AM), Bend, and KLRR(FM), Redmond, Oregon. Dolphin Communications, Inc., is the licensee of Stations KPRB(AM) and KSJJ(FM), Redmond. JJP Broadcasting, Inc., is the licensee of Station KOAK(FM), Bend. Oak Broadcasting, Inc., is the licensee of Stations KGRL(AM) and KXIQ(FM), Bend. Sequoia Communications is the licensee of Station KICE(FM), Bend.

⁶ In this connection, we note that the coordinates proposed in the *Notice* are not the same as those proposed in Danjon's petition.

⁷ See Reply Comments to Counterproposal, para. 12.

Danjon believed to be a first local FM allotment at Prineville or that the proposal was filed to assist the uncontested grant of Martin's proposal. We also find that no ulterior motive necessarily attaches to the choice of Channel 284A as Prineville's proposed allotment. We frequently receive counterproposals to proposed allotments that are resolved by the allotment of a channel other than that originally requested. Some of the alternate channels, in fact, may be considered as more attractive than the originally requested channel since a less restrictive or no site restriction is required.⁸ Finally, we do not find that the fact that the same law firm represents Danjon in its MDS applications and Martin in its rule making request to evidence any collusion between the two parties.

6. We believe the public interest would be served by substituting Channel 281C1 for Channel 281A at Sisters, Oregon, since it could provide the community with a wide coverage FM service and enable Station KPXA to expand its service area. Channel 281C1 can be allotted to Sisters in compliance with the Commission's minimum distance separation requirements with a site restriction of 30 kilometers (18.4 miles) southeast to accommodate Martin's desired transmitter site.⁹ As requested, we will also modify Station KPXA's construction permit to specify operation on Channel 281C1.

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 **November 20, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Sisters, Oregon	281C1

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Schuyler H. Martin for Station KPXA, Sisters, Oregon, IS MODIFIED to specify operation on Channel 281C1, in lieu of Channel 281A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (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 assessment pursuant to Section 1.1307 of the Commission's Rules.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of 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, Schuyler H. Martin, permittee of Station KPXA, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

10. IT IS FURTHER ORDERED, That the petition for rule making submitted by Danjon, Inc. to allot Channel 284A to Prineville, Oregon, IS DISMISSED.

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

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁸ See e.g., *Stuart and Boone, Iowa*, 5 FCC Rcd 4537 (All. Br. 1990) (mutually exclusive proposal resolved by allotment of alternate channel) and *Chico, California*, 6 FCC Rcd 4294 (All. Br. 1991) (alternate channel allotted because it required no site restriction). Conversely, a site restriction may be viewed as

advantageous since it can protect a desired mountaintop location or land already owned by the proponent.

⁹ The coordinates for Channel 281C1 at Sisters are North Latitude 44-04-40 and West Longitude 121-19-52.