

FCC MAIL SECTION

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

JAN 21 3 01 PM '93

DISPATCHED BY

MM Docket No. 92-47

In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
TV Broadcast Stations.  
(Bellingham and Anacortes, Washington)

RM-7929

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

Adopted: December 24, 1992; Released: January 21, 1993

By the Chief, Policy and Rules Division:

1. Before the Commission is a Petition for Reconsideration of the *Report and Order* in this proceeding, 7 FCC Rcd 5453 (1992), filed by Darlene C. Paglinawan McHenry ("McHenry"), permittee of Low Power Television Station K24CX, Channel 24, Anacortes, Washington.<sup>1</sup> The *Report and Order* granted a petition for rule making filed by Prism Broadcasting Company, Inc. ("Prism"), permittee of Station KBCB(TV), Channel 64, Bellingham, Washington, requesting the reallocation of UHF television Channel 24 in lieu of Channel 64 at Bellingham, and the reallocation of Channel 64 in lieu of Channel 24 at Anacortes. Prism filed an untimely opposition in response to McHenry's petition for reconsideration.<sup>2</sup>

2. *Background.* The *Report and Order* approved the substitution of Channel 24 in lieu of Channel 64 at Bellingham so as to allow Prism to operate Station KBCB(TV), Bellingham, at "the site specified in its construction permit, at increased power without having to negotiate special limits by international treaty with Canada."<sup>3</sup> We determined that this action served the public interest by allowing for increased and improved service to the population within Station KBCB(TV)'s coverage area. The *Report and Order* also rejected McHenry's objection that this action would prevent it from eventually modifying its construction permit for Station K24CX to operate at increased power. In rejecting this claim, we reiterated our

policy that low power television is a secondary service, and that changes to the Television Table of Allotments may be made without regard to LPTV stations.

3. *Petition for Reconsideration.* McHenry argues that we wrongly accepted, without requiring factual support, Prism's claim that the Canadian government is unlikely to approve operation of Station KBCB(TV) on Channel 64 at Bellingham at more than 1,000kW ERP. McHenry asserts that the substitution is unnecessary, as Prism could operate its Channel 64 at Bellingham at full power from alternate sites in the area. McHenry argues that operation of Station KBCB(TV) on Channel 24 in lieu of Channel 64 would not significantly increase the population served by the station, as it is located in a sparsely populated area of Washington. Finally, McHenry argues that she has expended considerable effort and is ready to commence low power television service on Channel 24 at Anacortes, whereas Prism received its construction permit for Channel 64 at Bellingham several years ago and has yet to construct its station. McHenry maintains that public interest concerns dictate that she be permitted to operate on Channel 24 at Anacortes despite her station's secondary status.

4. *Discussion.* We will deny McHenry's petition for reconsideration. As an initial matter, we reject McHenry's argument that Prism's delay in constructing exhibits a lack of commitment by Prism to operate Station KBCB(TV). At all relevant times, Prism has sufficiently maintained its interest in Channel 64 with valid and timely requests for extensions of time in which to construct a station.<sup>4</sup>

5. We continue to believe that substitution of Channel 24 in lieu of Channel 64 at Bellingham serves the public interest. This action will permit Prism to operate Station KBCB(TV) at more than 1,000kW ERP at its presently authorized site without the need to conduct negotiations with Canada to establish special frequency limits. The resulting increase in power will bring an increase in the population capable of receiving service by Station KBCB(TV).

6. As we stated in the *Report and Order*, low power television facilities are classified as secondary services. As such, full power television stations take precedence over LPTV facilities.<sup>5</sup> We do not believe that Prism should be required to find a site other than that specified in its construction permit, or be required to operate at limited power, when the use of an alternate channel would permit higher powered operation and the only impediment to such use is the presence of a low power television station.

7. Therefore, IT IS ORDERED. That the Petition for Reconsideration filed by Darlene C. Paglinawan McHenry, permittee of LPTV Station K24CX, Anacortes, Washington IS DENIED.

8. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

<sup>1</sup> Public notice of the filing of McHenry's petition was given on October 13, 1992, Report No. 1911.

<sup>2</sup> Prism filed its opposition on November 20, 1992, twenty-three days after the filing deadline. Prism offers no explanation for its untimely filing. Therefore, we will not consider Prism's comments. See 47 C.F.R. §1.429(f).

<sup>3</sup> Channel 64 at Bellingham is short-spaced to Channel 63, Vancouver, British Columbia. Prism claimed in its petition for rule making that special limits negotiated by international treaty with Canada are required to operate Channel 64 at more than 1,000kW effective radiated power ("ERP"). However, op-

eration at increased power on Channel 24, if reallocated to Bellingham, would not require special negotiations with Canadian authorities.

<sup>4</sup> The Commission issued Prism's construction permit for operation on Channel 64 in April 1989. In April 1991, Prism received a time extension because of a delay in the delivery of the antenna system. Subsequently, Prism received two more extensions due to this pending rule making proceeding. See File Nos. BPMCT-890314KE, BPMCT-910419KE, and BPMCT-920519KE.

<sup>5</sup> See 47 C.F.R. §74.702(b).

9. For further information concerning this proceeding, contact Lawrence A. Walke, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

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