

FCC MAIL SECTION

JUL 18 8:27 AM '95
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 92-221

In the Matter of

Amendment of Section 73.202(b), RM-8071
 Table of Allotments,
 FM Broadcast Stations.
 (Quincy and Susanville,
 California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 5, 1995

Released: July 17, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 7 FCC Rcd 6370 (1992), issued in response to a petition for rule making filed on behalf of Olympic Broadcasters, Inc. ("petitioner"), licensee of Station KQNC(FM), Quincy, California, proposing the reallocation of Channel 271A to Susanville, California, as a Class C2 channel, and modification of its license accordingly.¹ Petitioner filed comments reaffirming its intention to apply for Channel 271C2 at Susanville. Opposing comments were filed by Sierra Broadcasting Corporation ("Sierra")² and by Ralph E. Wittick ("Wittick").³ Petitioner filed a motion for extension of time to file reply comments and reply comments.⁴

2. As stated in the *Notice*, petitioner seeks the substitution of Channel 271C2 for Channel 271A and its reallocation from Quincy (population 2,700 persons) to Susanville (population 7,279 persons),⁵ and modification of its license for Station KQNC(FM) accordingly. In support

¹ The *Notice* herein advised that although petitioner is licensed on Channel 271C2 at Quincy, it was downgraded to Channel 271A to accommodate the modification of its commonly owned Station KSSJ(FM) (formerly KFIA-FM), Shingle Springs, California. See 7 FCC Rcd 3133 (1992). Petitioner has been issued a construction permit on Channel 271A at Quincy. See File No. BPH-920730IG.

² Sierra is the licensee of Stations KSUE(AM) and KJDX(FM) (formerly KSUE-FM), Susanville.

³ Wittick is the licensee of Station KPCO(AM), Quincy.

⁴ Although petitioner's request for an extension of time was unopposed, it was not filed seven days in advance of the filing deadline for the receipt of reply comments in this proceeding, as required by Section 1.46(b) of the Commission's Rules. Petitioner advised that the additional time was necessary to analyze the gain and loss areas which would result from the proposed reallocation of Station KQNC(FM) from Quincy to Susanville. The staff did not act on the extension request. In view of the fact that Sierra and Wittick did not object to the petitioner's extension request, we believe that the acceptance of the reply comments will serve the public interest since they will provide

of its proposal petitioner advises that the requested reallocation would provide an additional competitive transmission service to Susanville,⁶ and would not deprive Quincy of local service.⁷

3. Wittick asserts that the petitioner's reallocation proposal would not serve the public interest requirements of Section 307(b) of the Communications Act of 1934 since it would not result in an equitable distribution of facilities between Quincy and Susanville. In this regard, Wittick disputes petitioner's contention that because Susanville's population is 2.7 times larger than Quincy's, yet the former community has less local service, the current distribution of allotments between the two communities is inefficient and inequitable. Wittick states that the 1990 U.S. Census attributes the Quincy-East Quincy census area with a population of 4,271. Additionally, Wittick remarks that a few small areas of population adjacent to Quincy raises its total population to approximately 4,500 persons. Therefore, Wittick asserts that the total population of the two communities is not as different as petitioner claims.

4. Wittick remarks that even if the petitioner's proposal is determined to be technically preferable pursuant to Section 307(b) of the Communications Act, the petitioner must demonstrate that the discontinuance of present service at Quincy does not outweigh the theoretical gains from the reallocation to Susanville. In this regard, Wittick states that the Commission has stressed that the provisions of Section 1.420(i) may not be used by a licensee merely to abandon a smaller market in favor of a larger one.⁸ Wittick adds that since Susanville is currently served by two licensed stations and has been authorized a third local service, its population is presently well served by local broadcast outlets. Conversely, Wittick claims that as Quincy is presently served locally by only two licensed stations, the petitioner's proposal, if granted, would result in a 50% reduction of existing service to approximately 5,000 residents, leaving that population's choice to a single AM broadcast station. Since the public has a legitimate expectation of continued service, Wittick remarks that the petitioner's proposal fails to meet the Commission's mandate to justify the disruption of Quincy's present service or that

a more complete record to facilitate the Commission in the resolution of this proceeding. See Section 1.425 of the Commission's Rules.

⁵ Population figures are taken from the 1990 U.S. Census.

⁶ Susanville is served locally by fulltime Station KSUE(AM) and KJDX(FM), Channel 227C. Although a construction permit issued for Station KKLC(FM) to operate on Channel 242C3 in Susanville (File No. BPH-910204ME) was cancelled, a petition for reconsideration of that action has been filed.

⁷ Besides Station KQNC(FM), Quincy is served locally by fulltime Station KPCO(AM). Additionally, construction permits have been issued at Quincy for Station KNLF(FM) to operate on Channel 276A (File No. BMPH-920219JI), and for Station KSPY(FM) to operate on Channel 262C3 (File No. BMPH-940425IB). Station KNLF(FM) has been modified to specify operation on Channel 240A. See 7 FCC Rcd 1318 (1992).

⁸ Petitioner notes that this policy was applied in *Eatonton and Sandy Springs, Georgia and Anniston and Lineville, Alabama* ("Anniston"), 70 RR 2d 182 (1992). However, it is inappropriate to rely on the rationale employed in *Anniston* in the context of this proceeding as an application for review of that decision is

the expected gain from the reallocation outweighs the loss of service to Quincy's residents.⁹ Thus, Wittick urges denial of the petitioner's proposal.

5. Sierra alleges that petitioner's proposal constitutes not only an upgrade and reallocation, but an abandonment of the sole FM operation at Quincy in favor of a new market and commercial center. Sierra asserts that the presence of two uncommitted construction permits in Quincy cannot justify the loss of service to that small, remote community. Furthermore, Sierra remarks that a Class A station at the smaller community of Quincy, which is located in amountainous region, could not remain economically viable unless it could expand its coverage area to reach additional listeners. Yet, Sierra claims that petitioner purposely downgraded Station KQNC(FM) to Class A status at Quincy to accomplish an upgrade of a commonly owned station in Shingle Springs, California. Sierra maintains that if petitioner's proposal is granted, it would result in a disproportionate arrangement of allotments, as Susanville would have three high powered Class C channels and Quincy would be left with Class A facilities. Sierra comments that petitioner has not attempted to develop Station KQNC(FM) as a local Quincy facility, but rather appears to operate it as a satellite of its Station KTHX(FM), Reno, Nevada.¹⁰ Sierra asserts that petitioner's motive in acquiring Station KQNC(FM) was a catalyst toward Susanville. Thus, Sierra urges denial of the proposal in favor of maintaining operation of a needed service to the smaller remote community of Quincy.

6. In response to the oppositions posed by Wittick and Sierra, petitioner asserts that the basis of each objector's motive is to stifle competition. Petitioner advises that Sierra is the licensee of an AM-FM combination in Susanville. Wittick is the licensee of fulltime Station KPCO(AM), Quincy. Further, petitioner advises that Wittick is also the licensee of Station KCMT(FM), Channel 255C, Chester, California, which is located approximately 25 miles west of Susanville. Petitioner claims that although Wittick and Sierra couch their oppositions on public interest grounds, the underlying basis of their objections stem from marketplace considerations relating to their own broadcast interests.

7. As to Sierra's allegation that a lower powered, Class A facility in Quincy could not remain economically viable unless it is able to increase its facility to a higher class channel to expand its coverage area, petitioner comments that any upgrade of Station KQNC(FM) requires a change in its transmitter location and city of license to comply with the minimum distance separation requirements of Section 73.207(b) and the principal city coverage requirements of 73.315 of the Commission's Rules. Moreover, petitioner notes that the previous downgrade of Station KQNC(FM) is not relevant to this proceeding. Rather, the only issue present here is whether the public interest would be better served by the reallocation proposal.

8. In support of its proposal, petitioner states that it is not attempting to relocate from an underserved rural area to a well-served urban area. Both Quincy (population 2,700) and Susanville (population 7,279) are small markets. Petitioner comments that the fact that Susanville is the larger in terms of population is a difference of degree only, and not of substance. Petitioner claims it is not attempting to abandon Quincy in favor of Susanville. Rather, it states it is driven by a desire to regain the formerly licensed Class C2 facilities of Station KQNC(FM) via the instant rule making proceeding.

9. In further support of its proposal, petitioner remarks that although Quincy would be left with Station KPCO(AM) as its sole local transmission service until Station KSPY(FM), Channel 263C3 and Station KNLF(FM), Channel 276A commence operations, the community would not be deprived of local transmission service as the Commission considers AM and FM stations to be joint components of a single aural medium. See 5 FCC Rcd 7094, 7097 (1990). Moreover, petitioner advises that in addition to Station KPCO(AM), Quincy receives other reception services, such as, but not limited to, Station KCMT(FM), Chester, California.

10. Petitioner comments that as Susanville's population is 2.7 times larger than Quincy, yet it has only three local transmission services (one of which is not operative), whereas Quincy has four local transmission services (two of which are not operative), its proposal would result in a preferential arrangement of allotments by providing the larger community of Susanville with its fourth local transmission service, while three local transmission services would remain at the smaller community. Petitioner concludes that adoption of its proposal would enable Station KQNC(FM) to regain its formerly licensed Class C2 status, thereby maximizing use of the frequency, while enabling it to provide an improved reception service to a larger audience at Susanville.

11. Based upon a careful review of the information presented in this proceeding, we believe the public interest would be served by reallotting Channel 271A from Quincy to Susanville as a Class C2 channel, since it will result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. 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, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*"). Applying those procedures, we compare the existing arrangement of allotments with the proposal using our FM allotment priorities.¹¹

12. In making our comparison, the first three priorities are not applicable here. No white or grey areas are in-

pending.

⁹ Wittick cites to several cases to support its assertion concerning the burden placed on applicants to demonstrate the public interest justification relative to the loss of a local service designed to meet a community's particular needs. However, the authorities cited are inappropriate in the context of this proceeding as they relate to comparative hearing issues, or to gain and loss comparisons pursuant to previous decisional law which the Commission has since rejected. See elimination of the "Berwick Doctrine" and the De Facto Reallocation Policy, 93

FCC 2d 436 (1983).

¹⁰ According to the Commission's records, Station KTHX-FM, Carson City, Nevada, is now licensed to Bridge Capital Investors, II.

¹¹ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

volved¹² (priorities (1) and (2)), and each community has local transmission services (priority (3)). Therefore, priority (4) "other public interest matters"¹³ applies in this instance. The reallocation would not remove the sole local transmission service from Quincy as fulltime Station KPCO(AM) will remain in the community.¹⁴ Susanville, which is not in an urbanized area, will receive its fourth local transmission service.¹⁵ Additionally, the reallocation will enable Station KQNC(FM) to upgrade its facilities, and provide reception service to 14,982 persons residing in Plumas and Lassen Counties in an area comprising 5,716 square kilometers. The gain area will include the provision of a fifth service to 2,734 persons and a fourth service to 1,306 persons. Our engineering analysis also reveals that the removal of Station KQNC(FM) from Quincy will create a reception service loss to 6,379 persons in an area of 1,666 square kilometers. While we carefully evaluate any proposal that would result in the loss of existing reception service, the population within the loss area will continue to receive service from five or more fulltime aural services. Therefore, in accordance with the provisions of Section 1.420(g) and (i) of the Commission's Rules, we will modify the authorization for Station KQNC(FM) to specify operation on Channel 271C2 in lieu of its present authorization on Channel 271A at Quincy.

13. Channel 271C2 can be allotted to Susanville at the petitioner's specified site located 8.2 kilometers (5.1 miles) northeast of the community at coordinates 40-27-13 and 120-34-14.

14. 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 August 31, 1995, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Quincy, California	240A, 262C3
Susanville, California	227C, 242C3, 271C2

15. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Olympic Broadcasters, Inc. for Station KQNC(FM) (File No. BLH-940309KA), IS MODIFIED to specify operation on Channel 271C2 at Susanville, California, in lieu of Channel 271A at Quincy, California, 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), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(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.

16. 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, Olympic Broadcasters, Inc., licensee of Station KQNC(FM), 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 upgrade at Susanville, California.

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

18. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² A white area refers to a geographical area in which there are no full-time aural reception services. A gray area is one that is served by one full-time aural reception service only.

¹³ Pursuant to this category, factors such as population and area to be served, the present level of services available, and other considerations are evaluated to determine which community has the greater need for service.

¹⁴ Additionally, construction permits have been issued at Quincy for Station KSPY(FM), Channel 262C3 (File No. BMPH-

940425IB), and for Station KNLF(FM), Channel 276A (File No. BMPH-920219JI). As indicated earlier, Station KNLF(FM) has been modified to specify operation on Channel 240A. See 7 FCC Rcd 1318 (1992).

¹⁵ The construction permit issued for Station KKLC(FM) to operate on Channel 242C3 at Susanville (File No. BPH-910204ME) was cancelled May 19, 1994. A petition for reconsideration of that action is pending.