

APR 8 10 06 AM 1997 Federal Communications Commission DA 97-632

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

In the Matter of)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-103
Table of Allotments,)	RM-8794
FM Broadcast Stations.)	RM-8839
(Smith and Reno, Nevada, Susanville)	
and Truckee, California) ¹)	

ORDER TO SHOW CAUSE

Adopted: March 26, 1997

Released: April 2, 1997

Comment Date: May 27, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 5298 (1996), issued in response to the petition for rule making filed by Donegal Enterprises, Inc. ("petitioner"), proposing the allotment of Channel 271C3 to Smith, Nevada, as the community's first local aural service. Comments were filed by the petitioner² and a counterproposal was filed by Chris Kidd d/b/a Kidd Communications ("Kidd"). Reply comments were filed by the petitioner and Kidd.

2. Kidd counterproposes that Channel 268A be allotted to Truckee, CA, as the

¹ The communities of Truckee and Susanville, California, and Reno, Nevada, have been added to the caption.

² Petitioner's comments were late filed. Comments in this proceeding were due on June 27, 1996. According to the petitioner it did not receive a copy of the Notice of Proposed Rule Making until July 16, 1996, after it had contacted the Commission to determine the status of its request. Generally, acceptance of late filed comments supporting an allotment proposal is limited to situations where there is no opposition to the proposal and where there would be no adverse impact on another pending proposal. See Moscow, Ohio, 5 FCC Rcd 927 (1990), and Marine Broadcasting Corporation, 7 FCC Rcd 544 (1992). In this case, the Smith proposal is opposed by Kidd who seeks a mutually exclusive allotment at Truckee, CA. However, in this instance, we will accept petitioner's comments for the purpose of expressing a continuing interest in applying for the channel because an alternate channel has been found for allotment to Smith which does not conflict with the counterproposal submitted by Kidd.

community's first local transmission service. To accommodate the allotment at Truckee, Kidd also requests that Channel 271C3 be substituted for Channel 269C3 at Reno, Nevada, the license of Station KRNV-FM be modified to specify the alternate Class C3 channel, and that Channel 222C2 be substituted for Channel 271C2 at Susanville, California, and the license of Station KHJQ (formerly KQNC(FM)) be modified to specify the alternate Class C2 channel.³ Kidd also proposes that Channel 259A be allotted to Smith instead of the proposed Channel 271C3. He states that he will apply for Channel 268A, if allotted to Truckee, and commits to reimbursing the licensee of Station KRNV-FM for the costs associated with the change in the station's operating channel. Kidd believes that no reimbursement is due to Station KHJQ at Susanville because there is presently no authorized facility occupying the channel, citing Boonville and Columbia, Missouri, 7 FCC Rcd 2970 (1992) (applicants are not entitled to reimbursement for a modification of channel). However, if the Commission determines that Station KHJQ is entitled to reimbursement, he states his intention to also reimburse the licensee for the reasonable and prudent costs already expended in effectuating its move to Channel 271C2 where the costs are not equally applicable to Channel 222C2 at Susanville.

3. In order to proceed with the proposals in this proceeding, it is necessary to issue an Order to Show Cause to the respective licensees of Stations KRNV-FM and KHJQ seeking comment on why their licenses should not be modified to specify operation on Channels 271C3 and 222C2, respectively, in lieu of their present Channels 269C3 and 271C2, respectively. An engineering analysis confirms that Channel 271C3 can be allotted to Reno in compliance with the Commission's minimum distance separation requirements at Station KRNV-FM's presently licensed transmitter site, at coordinates 39-35-03; 119-47-52. Channel 222C2 can be allotted to Susanville in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KHJQ's outstanding construction permit (BPH-961017IB), at coordinates 40-27-13; 120-34-14. Channel 268A can be allotted to Truckee with a site restriction of 9.3 kilometers (5.8 miles) west, to avoid a short-spacing to Station KRNG, Channel 267C2, Fallon, Nevada, at coordinates 39-17-45; 120-16-57. A staff engineering study has also confirmed Donegal's showing that, rather than the Class A counterproposed by Kidd for allotment to Smith, Channel 222C3 can be allotted to Smith, with a site restriction 0.7 kilometers (0.4 miles) south, at coordinates 38-47-39; 119-19-31, to avoid a short-spacing to Station KZSR,

³ The license of Station KHJQ was modified from Channel 271A to Channel 271C2, and its community of license was changed from Susanville to Quincy, California, pursuant to the Report and Order in MM Docket 92-221. See 10 FCC Rcd 7709 (1995). On January 23, 1997, the Commission granted Olympic Broadcasters, Inc., licensee of Station KHJQ, a construction permit for Channel 271C2 at Susanville, conditioned on the outcome of this proceeding. We also note that on January 7, 1997, the Commission granted the assignment of license application from Olympic Broadcasters, Inc., to Sierra Broadcasting Corporation (BALH-961127GF). However, the assignment of license has not yet been consummated.

Channel 225C, Reno, Nevada.⁴

4. Although Sunbelt Broadcasting Company, licensee of Station KRNV-FM, and Olympic Broadcasters, Inc., licensee of Station KHJQ, are provided an opportunity to object to the proposed channel changes, this Order does not afford an additional opportunity either to comment on the merits of the proposal set forth in the Notice or the counterproposal advanced by Kidd. See Angola, Indiana, et al., 5 FCC Rcd 2000 (1990).

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Sunbelt Broadcasting Company ("Sunbelt"), licensee of Station KRNV-FM, Reno, Nevada, and Olympic Broadcasters, Inc. ("Olympic"), licensee of Station KHJQ, Susanville, California, SHALL SHOW CAUSE why their respectively licenses SHOULD NOT BE MODIFIED to specify operation on Channels 271C3 and 222C2 as proposed herein instead of their present Channels 269C3 and 271C2.

6. Pursuant to Section 1.87 of the Commission's Rules, Sunbelt and Olympic may, not later than May 27, 1997, file a written statement showing with particularity why their respective licenses should not be modified as proposed in the Order to Show Cause. The Commission may call on Sunbelt and/or Olympic to furnish additional information. If Sunbelt and/or Olympic raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of the modifications for hearing. If no written statement is filed by the date referred to above, Sunbelt and/or Olympic will be deemed to have consented to the modifications as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

⁴ The petitioner, in its comments in response to the counterproposal, requests that the proposed reference coordinates for Channel 222C3 be those specified in its petition (38-41-06; 119-11-04) which are 17.8 kilometers (11 miles) southeast of Smith, stating that they create no new short-spacings and they represent an existing communications facility where the petitioner intends to construct the proposed facilities if granted the construction permit. The Commission generally does not protect a prospective applicant's desired transmitter site where the allotment will be available for application by multiple parties since we do not require the type of detailed technical antenna site showing required of an applicant and there is no guarantee that the petitioner will become the licensee. See Stuart and Boone, Iowa, 5 FCC Rcd 4537 (1990), recon. denied, 6 FCC Rcd 6036 (1991). In this case, we also will not propose the allotment of Channel 223C3 at the transmitter site coordinates requested by the petitioner but, instead, will propose coordinates which represent the least site restriction possible, in concert with Commission policy. See Chico, California, 6 FCC Rcd 4294 (1991) and Vacaville, California, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). We note that Channel 222C3 can be used at the coordinates proposed by Donegal and thus, if allotted, it may submit an application specifying its preferred coordinates.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensee of Stations KRNV-FM and KHJQ, as follows: Station KRNV-FM, Sierra Radio Company, 1500 Foremaster Lane, Las Vegas, NV 89101 and Station KHJQ, Olympic Broadcasters, Inc., P.O. Box 215577, Sacramento, CA 95821.

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 Leslie K. Shapiro, 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 the 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 the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
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