

FEDERAL SECTION

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

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In the Matter of)	
Amendment of Section 73.202(b),)	MM Docket No. 96-206
Table of Allotments,)	RM-8877
FM Broadcast Stations.)	
(Raton, New Mexico))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 28, 1997

Released: June 6, 1997

By the Chief, Allocations Branch:

1. At the request of N'Joy Broadcasting ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 12783 (1996), proposing the allotment of Channel 249A to Raton, New Mexico, as the community's third local FM service. The Notice also proposed that the petitioner be allowed to amend its pending application (BPH-960124MA) for Channel 243A to reflect the new channel without loss of cut-off protection. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. As indicated in the Notice, petitioner and David F. Phillips (BPH-960126MB) are mutually exclusive applicants for Channel 243A at Raton, and the allotment of Channel 243A would accommodate both applicants' request for a Class A channel at Raton and avoid the need for a comparative hearing. Neither application can be granted because the Commission currently has no basis upon which to resolve the mutual exclusivity. See Bechtel v. Federal Communications Commission, 10 F.3d 875 (D.C. Cir. 1993). In the event that additional expressions of interest were filed, the Notice optionally proposed to also allot Channel 299A to Raton to accommodate such additional interests. However, no party expressed an interest in applying for Channel 299A. Therefore, we will not allot Channel 299A to Raton.

3. We believe the public interest would be served by allotting Channel 249A to Raton since it could provide the community with its third local FM transmission service and avoid the need for a comparative hearing consistent with our precedent. See Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991); and Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11927 (1995). Channel 249A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements at the proposed transmitter site specified in petitioner's pending application, which is 6.3 kilometers (3.9 miles) north of the community.¹ In addition, since no other party has expressed an interest in the

¹ The coordinates for Channel 249A at Raton are 36-57-18 North Latitude and 104-25-22 West Longitude.

channel at Raton, we will allow the petitioner to amend its application (BPH-960124MA) to specify operation on Channel 249A in lieu of Channel 243A and retain cut-off protection.

4. 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 July 21, 1997, 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:

<u>City</u>	<u>Channel No.</u>
Raton, New Mexico	229C2, 243A, 249A

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

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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