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Federal Communications Commission

DA 97-1467

DISPATCHED

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))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 9, 1997

Released: July 18, 1997

By the Chief, Allocations Branch:

1. At the request of Donegal Enterprises, Inc. ("Donegal"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 5298 (1996), proposing the allotment of Channel 271C3 to Smith, Nevada, as the community's first local aural service, and the Order to Show Cause, 12 FCC Rcd 3739 (1997), issued pursuant to the counterproposal filed by Chris Kidd d/b/a/ Kidd Communications ("Kidd") requesting the allotment of Channel 268A to Truckee, California, as the community's first local aural service, and channel substitutions at Reno, Nevada, and Susanville, California. Comments and reply comments in response to the Notice of Proposed Rule Making were filed by Donegal and Kidd. Comments in response to the Order to Show Cause were filed by Sunbelt Broadcasting Company ("Sunbelt"), licensee of Reno Station KRNV-FM and by Sierra Broadcasting Corporation ("Sierra"),¹ licensee of Susanville Station KHJQ.²

2. Kidd states that Truckee is an incorporated community with a 1990 U.S. Census population of 3,484 persons. To accommodate the allotment at Truckee, Kidd also requested the substitution of Channel 271C3 for Channel 269C3 at Reno, Nevada, the modification of Station KRNV-FM's license to specify the alternate Class C3 channel, the substitution of Channel 222C2 for Channel 271C2 at Susanville, California, and the modification of Station KHJQ's license to

¹ The Commission granted the transfer of control application from Olympic Broadcasters, Inc. to Sierra Broadcasting Corporation on January 7, 1997, and the transfer was consummated on January 27, 1997. However, the Commission's records did not reflect the consummation of the transfer of control until after the adoption of the Order to Show Cause.

² After the record closed, Kidd filed Supplemental Comments responding to the reimbursement issue discussed by both Sierra and Sunbelt and a Motion for their acceptance. The Commission's Rules do not contemplate the filing of pleadings beyond that specified in the Notice of Proposed Rule Making and Order to Show Cause. We will not accept Kidd's unauthorized pleading since the additional filing was not requested and it provides no information of decisional significance.

specify the alternate Class C2 channel.

3. In response to the Order to Show Cause, Sierra and Sunbelt both oppose the modification of their licenses. Sierra states that Station KHJQ's request to upgrade the station to Channel 271C2, and relocate from Quincy to Susanville was granted effective August 31, 1995. However, the station was dark through 1996 and was not able to resume operations, as a Susanville station, until February 8, 1997. It argues that as a new licensee of a station that has only recently returned to the air, it is the process of building up public familiarity with the station and listener loyalty. Thus, it contends that the "drastic" move of the station from one end of the commercial FM band to the other would be very disruptive of the service it is trying to provide. Sunbelt also argues that the substitution of channels would be disruptive of Station KRVN-FM's operation. It states that Station KRVN-FM, which has been in operation since 1986, programs an all-news format. It submits that the channel switch, along with the down time necessary to implement the channel shift, poses a "significant threat" to the station's viability. Sunbelt bases this argument on the fact that Station KRVN-FM competes with three other stations which feature news-talk as well as 22 other radio stations in the Reno market, thus making the market highly competitive. Further, the station operates with 1.3 kW of power using a directional antenna from Red Peak, which is a multiple user site. The antenna site, according to Sunbelt, accommodates at present eight towers with three FM stations, three television stations, two FM translators and five low power television operations, as well as two-way paging and trunking operations. Thus, Sunbelt submits that the substitution of channels would impose substantial engineering and technical costs as well as substantial costs in order to maintain the station's listenership and revenue base. Because of the small population of Truckee, and the substantial cost which Sunbelt envisions the change of Station KRVN-FM's channel will cost, it also requests that the rule making not be concluded until Kidd demonstrates its ability to pay the financial costs associated with the channel change. However, should Kidd's proposal be adopted, Sierra and Sunbelt request that the Commission make clear the obligation of the successful applicant to reimburse Stations KHJQ and KRVN-FM for the costs associated with their respective change of channel.

4. Based on the record before us, we believe the public interest would be served by allotting Channel 222C3 to Smith, Nevada, and Channel 268A to Truckee, California, as the channel allotments can provide each community with its first local aural transmission service. As stated in the Order to Show Cause, the conflict between the two proposals can be resolved by the allotment of Channel 222C3 at Smith. In addition, we will substitute Channel 222C2 for Channel 271C2 at Susanville, California, substitute Channel 271C3 for Channel 269C3 at Reno, Nevada, and modify the licenses of Stations KHJQ and KRVN-FM, to specify the alternate channels. Although both Sunbelt and Sierra object to the modification of their licenses as proposed in the Order to Show Cause, we find that neither party has raised a substantial or material question of fact which would require a hearing on the modification of their respective licenses.

5. The Commission recognizes that a channel shift by an existing licensee can be disruptive to the station's operation. However, we have consistently found that the public interest

arising from the initiation of a new service outweighs the disruption caused to the existing station. See, Ava, Branson and Mountain Grove, Missouri, 10 FCC Rcd 13035 (1995), and cases cited therein. Pursuant to Commission policy, reimbursement of Stations KHJQ and KRVN-FM for the reasonable costs of changing their frequencies will be required and governed by the decisions in Circleville and Columbus, Ohio, 8 FCC 2d 159 (1968). We do not normally require a petitioner to show its financial ability to provide such reimbursement at the rule making stage and see no reason to do so here. Neither Sierra nor Sunbelt have provided any information which would cause us to question Kidd's statement that he will reimburse the affected licensees for the change of their operating channels or its ability to provide the required reimbursement. Further, because Channel 268A at Truckee will be the subject of an application filing window, there is no guarantee that Kidd will ultimately be the licensee. We do expect that the parties will negotiate in good faith, subject to Commission review in the event of disagreement. See Mayfield and Wickliff, Kentucky, 48 RR 2d 1232 (1981). Furthermore, no station need take steps to change frequency until it is assured that it will receive payment. See Churchville and Luray, Virginia, 5 FCC Rcd 1106 (1990), recon. denied, 6 FCC Rcd 1313 (1991).

Technical Summary

6. Channel 222C3 can be allotted to Smith, Nevada, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) south, to avoid a short-spacing to Station KZSR, Channel 225C, Reno, Nevada.³ Channel 268A can be allotted to Truckee, California, with a site restriction of 9.3 kilometers (5.8 miles) west, to avoid a short-spacing to Station KRNG, Channel 267C2, Fallon, Nevada.⁴ Channel 271C3 can be allotted to Reno at Station KRVN-FM's presently licensed transmitter site.⁵ Channel 222C2 can be allotted to Susanville at the transmitter site specified in Station KHJQ's outstanding construction permit (BPH-961017IB).⁶

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 September 2, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Susanville, California	222C2, 227C, 242C3

³ The coordinates for Channel 222C3 at Smith, NV, are 38-47-39 North Latitude and 119-19-31 West Longitude.

⁴ The coordinates for Channel 268A at Truckee are 39-17-45 North Latitude; 120-16-57 West Longitude.

⁵ The coordinates for Channel 271C3 at Reno are 39-35-03 North Latitude and 119-47-52 West Longitude.

⁶ The coordinates for Channel 222C2 at Susanville are 40-27-13 North Latitude; 120-34-14 West Longitude.

Truckee, California	268A
Reno, Nevada	225C, 238C, 271C3, 283C, 289C, 295C
Smith, Nevada	222C3

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Sierra Broadcasting Corporation, for Station KHJQ, Susanville, California, IS MODIFIED to specify operation on Channel 222C2 in lieu of Channel 271C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KHJQ's construction permit, BPH-961017IB, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-961017IB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Sunbelt Broadcasting Company, for Station KRNV-FM, Reno, Nevada, IS MODIFIED to specify operation on Channel 271C3 in lieu of Channel 269C3, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KRNV-FM's license, BLH-941122KA, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-941122KA, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the licensees, as follows: Sierra Radio Company, Station KRNV-FM, 1500 Foremaster Lane, Las Vegas, NV 89101; Sierra Broadcasting Corporation, 2339 Gold Meadow Way, Gold River, CA 95670.

11. The window period for filing applications for Channel 268A at Truckee, California, and 222C3 at Smith, Nevada, will open on September 2, 1997, and close on October 3, 1997.

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

13. 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