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ATTN: Mr. John Crigler, Esq.

Dear Mr. Crigler:

This is in response to the petition for rulemaking filed on June 5, 1996 on behalf of your client, Community Wireless of Park City ("CWPC"), and its draft supplement filed on January 27, 1997, your file numbers 0764-101-63 and 0764-101-60, respectively. This also responds to your letters of March 28, May 20, and June 10, 1997 requesting the status of your initial filing and offering to resolve any questions. CWPC requests modification of the FM Table of Allotments by deleting Channel 223A at Coalville, Utah; adding Channel 223A at Salt Lake City, Utah; and modifying the license of its Salt Lake City noncommercial Station KCPW, accordingly. This allotment request constitutes one-half of CWPC's requested exchange of commercial Channel 223A, operated noncommercially, but not reserved, at Coalville Station KCUA, for reserved Channel 202 at Salt Lake City, Station KCPW. To realize the other half of the exchange, CWPC requests modification of the license of Station KUCA, Coalville, to specify noncommercial operation on Channel 202, reserved for such use. CWPC is the licensee of the Coalville and Salt Lake City stations, as well as nearby noncommercial educational ("NCE") Station KPCW, Channel 220 at Park City, Utah.

Citing a need to improve service to its stations' "collective" listening areas, CWPC recounts its prior efforts to upgrade Coalville Station KCUA on Channel 223A, which have been stymied because of third-adjacent channel interference resulting from prohibited contour overlap between Station KCUA and Station KPCW at Park City. In order to upgrade its station and avoid interference and terrain shadowing, CWPC proposes that Coalville Station KCUA and Salt Lake City Station KCPW swap channels, which, you contend, would permit those two stations to be upgraded as well as Station KPCW at Park City. CWPC petitions the Commission to exchange the allotted channel at Coalville with the reserved NCE channel at Salt Lake City, stating that it will later request an upgrade of allotted, and not reserved, Channel 223A.

CWPC requests that any competing expressions of interest in the swap of Channel 223A for 202A at Salt Lake City be prohibited because the exchange constitutes an incompatible channel swap. We disagree. The concept of an

incompatible channel swap arose in the context of permitting the upgrade of commercial facilities on higher class adjacent or co-channel frequencies while not subjecting the licensee or permittee to the risk of losing its authorization. Although CWPC is correct that the Commission stated in *Modification of FM Broadcast Licenses*, 60 RR 2d 114 (1986) that it would consider analogous proposed substitutions at other communities necessary to create the mutually exclusive relationship as required by Rule Section 1.420(g), it is clear that only allotted Channels 221 to 300 qualify. Only these allotted, commercial channels (even when they may be reserved for NCE-FM use) are assigned by classes of station with facilities falling within specified class maximums and whose interference potential is evaluated assuming operation at maximum facilities for the class. The reserved NCE Channels 201 through 220 are not assigned on the basis of particular levels of facilities, but on the basis of the facilities to be actually used, which may be increased (or reduced) without regard to preset maximum (or minimum) levels of power and antenna height for a given class.

Moreover, an incompatible channel swap occurs only where each of the swapped non-adjacent allotted, commercial channels of a particular class is unique; each is the only channel that may be substituted at its site to create mutual exclusivity between the channels at issue. A reserved NCE channel can never be regarded as unique, since it is not assigned on the basis of preset levels of facilities or classes. Analysis of the interference potential, or any other aspect of the operation of a reserved NCE channel, is evaluated on the basis of a theoretically infinite number of actual facility levels -- not on the basis of preset maximum levels of facilities as is the case for allotted channels. Thus, an incompatible channel swap cannot exist for an exchange between reserved NCE channels, not capable of uniqueness for allotment purposes, or between a reserved NCE and an allotted, commercial channel, as CWPC proposes.

Additionally, CWPC does not propose a specific channel upgrade. Rather, it requests a mere channel swap, which, according to CWPC, would create the mutual exclusivity necessary to foreclose competing expressions of interest, and prospectively, to allow for the non-adjacent channel upgrade it ultimately seeks. However, the Commission created the concept of an incompatible channel swap only for non-adjacent channel upgrades, and CWPC's petition itself does not propose an *upgrade*. Therefore, even if CWPC's proposal involved only allotted channels, such concept would not be applicable.

Finally, the policies underlying intraband television channel exchanges, where competing expressions of interest are not allowed, does not favor and would tend to prohibit CWPC's proposal to exchange a commercial, allotted FM channel for an NCE FM reserved channel. Specifically, while you correctly outline why Intraband Television Channel Exchanges ("TV Channel Exchanges"), 59 RR 2d 1563 (authorization of TV channel exchanges within VHF or UHF band within the same

community) has an attenuated connection to the proposed FM channel exchange, there are policy concerns expressed in that proceeding that would tend to disqualify CWPC's proposal from consideration. The Commission's overriding concern in TV Channel Exchanges was that while it would permit such exchanges to take place within a given community, no community would be allowed to lose its public television service. See TV Channel Exchanges at 59 RR wed 146a. Shifting Channel 223A to Salt Lake City would place that community at an increased risk of loss of that NCE-FM service. Because Channel 223A is a non-reserved, commercial channel, the market dynamics of its possible use likely would change markedly, particularly considering that the channel then could be used to provide a commercial service to an area including Salt Lake City, and then could be upgraded to expand its urban area coverage.

In view of the above, we dismiss your rulemaking proposal.

Sincerely,

John A. Karousos
Chief, Allocations Branch
Mass Media Bureau