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FCC MAIL SECTION

Federal Communications Commission DA 98-612

APR 7 9 34 AM '98

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-7
Table of Allotments,	)	RM-8732
FM Broadcast Stations.	)	RM-8845
(Banks, Redmond, Sunriver and Corvallis,	)	
Oregon)[1]	)	
	)	
In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-12
Table of Allotments,	)	RM-8741
FM Broadcast Stations)	)	
(The Dalles and Corvallis, Oregon)	)	
	)	
In re Application of	)	
	)	
Madgekal Broadcasting, Inc.	)	File No. BPH-960206IE
Station KFLY(FM), Corvallis, Oregon	)	
	)	
For Construction Permit to Modify	)	
Licensed Facilities (One-Step Upgrade)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 25, 1998 **Released: April 3, 1998**

By the Chief, Allocations Branch:

1. At the request of Common Ground Broadcasting, Inc. ("Common Ground"), the Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 11 FCC Rcd 1686 (1996), proposing the substitution of Channel 298C1 for Channel 298C2 at Banks, Oregon, and the modification of its license for Station KDBX (now KBBT-FM) to specify the higher class channel.[2] To accommodate the allotment at Banks, an Order to Show

[1] The community of Sunriver, Oregon, has been added to the caption.

[2] On July 25, 1996, the voluntary assignment of license and construction permit (BPH-940930IE) from Common Ground to American Radio Systems License Corp. ("American Radio") was consummated and the call letters of Station KDBX were changed to KBBT-FM. However, for purposes of this proceeding, we will continue to refer to the licensee as Common Ground.

Cause was issued to Combined Communications, Inc. ("Combined"), proposing the substitution of Channel 269C2 for Channel 298C2 at Redmond, Oregon, and the modification of Station KLRR's license to specify the alternate Class C2 channel. At the request of LifeTalk Broadcasting Association ("LifeTalk"), the Commission also has before it the Notice of Proposed Rule Making, 11 FCC Rcd 1788 (1966), proposing the allotment of Channel 268C3 to The Dalles, Oregon, and its reservation for noncommercial educational use. After the two petitions were received, and prior to the close of the comment period, Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY, Corvallis, Oregon, filed a one-step upgrade application (BPH-960206IE) to substitute Channel 268C for Channel 268C2 and modify the station's license accordingly. The allotment of Channel 268C at Corvallis conflicts with the allotment of both Channel 269C2 at Redmond and Channel 268C3 at The Dalles. Therefore, in accordance with the provisions set forth in Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, the timely filed Corvallis application has been accepted as a counterproposal in both proceedings and the dockets have been consolidated for consideration.[3] In response to the individual Notices, comments were filed by LifeTalk, and jointly by Common Ground and Combined. In addition, a counterproposal to the Banks/Redmond proposal was filed by Hurricane Broadcasting, Inc. ("Hurricane"), requesting the allotment of Channel 269C2 to Sunriver, Oregon.[4] Reply comments were filed by LifeTalk, MBI, Hurricane, and jointly by Common Ground and Combined.[5]

2. In response to the Banks/Redmond Notice, Common Ground and Combined filed joint comments supporting the allotment of Channel 298C1 at Banks and Channel 269C2 at Redmond, and reiterating their intention to file for their respective channels, if allotted. In addition, Combined states its consent to the modification of Station KLRR's license to specify operation on Channel 269C2 and Common Ground reiterates its intention to reimburse Combined for the costs associated with its change of channel.

3. LifeTalk, in response to the proposed allotment at The Dalles, filed comments supporting the proposal as outlined in the Notice and reiterated its intention to apply for Channel *268C3, if allotted. In addition, LifeTalk complied with the Commission request that it submit

[3] See 8 FCC Rcd 4735, 4739 (1993). Public Notice of the application's acceptance as a counterproposal in these proceedings was given on June 5, 1996, Report No. 2135.

[4] Public Notice of the counterproposal was given on July 18, 1996, Report No. 2143.

[5] After the record closed, LifeTalk filed a Supplement to its comments for the sole purpose of clarifying its statement of intent to apply for Channel *268C3, if allotted to The Dalles, and to erect the taller tower than normal as set forth in the Notice. MBI filed a Motion to Strike the supplemental comments and both LifeTalk and American Radio/Combined filed Oppositions to the Motion to Strike. American Radio (successor to Common Ground) and MBI also filed a Joint Request for Approval of Agreement. The request to approve the settlement agreement will be discussed below. However, because a theoretical antenna site for Channel *268C3 at The Dalles has been advanced which does not require the use of the extraordinarily tall tower proposed in the Notice, comments with regard to the use of such a tall tower as well as LifeTalk's Supplement, MBI's Motion to Strike, and American Radio/Combined and LifeTalk's oppositions to the motion to strike are moot and will not be discussed.

an affidavit, in accordance with Section 1.52 of the Commission's Rules, verifying that the statements contained in its petition are accurate to the best of its knowledge.

4. Hurricane states that Sunriver has a population of 1,500 - 1,600 permanent residents which swells to 10,000 people during the peak tourist season. It states that the elective owners association acts as a local government and that Sunriver has its own police, fire and road maintenance departments. In addition, Sunriver has its own post office, zip code, Rotary Club, Chamber of Commerce, local mall with 50-60 businesses, gas stations, hotels and restaurants. Hurricane admits that Sunriver is not a Census Designated Place but submits that the residents consider themselves to be a community. It contends that the public interest would be better served by the allotment of a first local aural service at Sunriver than by the upgrading of an existing station at Banks, citing to the allotment priorities set forth in Revision of FM Assignment Policies and Procedures.[6] Further, Hurricane submits that all or part of the population within the 60 dBu gain area of an upgraded Bank's station already receives 60 dBu service from twenty-seven (27) FM stations and 5 mV/m service from seventeen (17) AM stations. Finally, Hurricane states that it will apply for the channel, if allotted to Sunriver.

5. Common Ground and Combined, in jointly filed reply comments, reiterate their intention to apply for the Banks and Redmond channels, if allotted. They also state that there is no need to comparatively consider their proposal and that of Hurricane because Channel 224C2 is available for allotment to Sunriver. They note that the use of Channel 224C2 at the transmitter site specified in Hurricane's petition would be "slightly" short-spaced to the reference coordinates for Channel 224C3 at The Dalles but state that the requested tower site is fully spaced to both of the pending applications for that channel. Based on the provisions of Section 73.208(a)(1) of the Commission's Rules, they contend that the relevant coordinates to be used in determining distance separation compliance are those of the cut-off applications for Channel 224C3 at the Dalles and thus state that Channel 224C2 at Sunriver is a fully-spaced allotment.[7] However, if the Commission requires that The Dalles reference coordinates be protected, in addition to the application coordinates, Common Ground/Combined state that use of the Sunriver city reference coordinates can be used. Therefore, they conclude that Channel 224C2 can be allotted to Sunriver specifying either no site restriction or Hurricane's proposed transmitter site.

6. MBI states that if no alternate channels are available for allotment at Redmond and The Dalles, the public interest would be better served by granting its application to upgrade Station KFLY. It states that Corvallis, and its county, Benton, receives local FM service from

[6] The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. See 90 FCC 2d 88, 92 (1982).

[7] Section 73.208(a)(1), in pertinent part, reads: The following reference points must be used to determine distance separation requirements when petitions to amend the Table of Allotments (Section 73.202(b)) are considered: (i) First, transmitter sites if authorized, or if proposed in applications with cut-off protection pursuant to paragraph (a)(3) of this section; (ii) Second, reference coordinates designated by the FCC; . . .

only two commercial FM stations, one of which is Station KFLY.[8] Corvallis has a 1994 Census Bureau population estimate of 46,244 persons, and Benton County has a 1995 Census Bureau population estimate of 75,235 persons. MBI characterizes Banks, with a 1994 population of 654 persons, as a "small suburb" of Portland, Oregon. Further, it states that Station KBBT-FM's present transmitter site, which is the same one specified in the Notice, is approximately 30 kilometers east of Banks, close to Portland itself. MBI goes on to state that Portland is the 24th largest radio market, according to Arbitron, and that, including KBBT-FM, the Portland market already has twenty-two (22) AM and twenty (20) FM stations. As to the allotment of Channel *268C3 at The Dalles, MBI points out that its 1990 Census population of 11,060 people is one-fourth that of Corvallis and that The Dalles already receives local aural service from three FM stations and two AM stations as well as noncommercial educational service from an FM translator licensed to Oregon Public Broadcasting.

7. In response to the proposed allotment of Channel 268C at Corvallis, Common Ground and Combined state that the choices before the Commission are: (1) the substitution of Channel 268C for Channel 268C2 at Corvallis and the modification of Station KFLY's license accordingly, or (2) the substitution of Channel 298C1 for Channel 298C2 at Banks, with the modification of Station KDBX's license, the substitution of Channel 269C2 for Channel 298C2 at Redmond with the modification of Station KLRR's license accordingly, as well as the allotment of a new Channel 268C3 at the Dalles, with its reservation for noncommercial educational use. They recognize that the alternate channel proposed for Sunriver, Channel 224C2, can be allotted regardless of what actions are taken with respect to the other communities. However, they suggest that a "global solution" is available which will enable all four participants to receive either a new, improved or equivalent FM channel. Specifically, they propose that Station KFLY at Corvallis be upgraded from Channel 268C2 to Channel 268C1 instead of Chancel 268C and that the reference coordinates for Channel *268C3 at The Dalles be modified from those proposed in the Notice.[9]

8. In comparing the three alternatives, Common Ground/Combined state that the Banks/Redmond/The Dalles allotments, as proposed in the Notices, would result in a net gain in service to 270,406 people within a 13,075 square kilometer area while the upgrade of Station KFLY to a Class C channel at Corvallis would result in a net gain in service to 325,969 persons within a 9,490 square kilometer area.[10] However, if Channel 268C1, instead of Channel 268C, is allotted to Corvallis, not only will Station KFLY realize an increase in population served to

[8] Corvallis also receives local aural service from two Class C AM stations, KEJO and KLOO, as well as noncommercial educational AM Station KOAC and noncommercial educational FM Station KVBR.

[9] The "global solution" coordinates for Channel 268C3 at The Dalles are 45-34-00 North Latitude and 120-55-00 West Longitude, which reflects a site restriction of 20.3 kilometers (12.6 miles) east.

[10] Common Ground/Combined states that the population figures within the respective gain areas were computed using the actual Class C facilities proposed by MBI, citing Greenup, KY and Athens, OH, 4 FCC Rcd 3843 (19989), rev. granted on other grounds, 6 FCC Rcd 1493 (1991), appeal dismissed sub nom. WATH, Inc. v. FCC, No. 91-1268 (D.C. Cir. Sept. 26, 1991).

299,245 people, which is only 26,724 persons less than could be realized by operating with full Class C facilities, but it would permit the allotment of a first noncommercial educational service at The Dalles, which would provide service to 48,075 persons. They also state that Channel 268C1 can be allotted to Corvallis in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KFLY's pending application (BPH-960206IE) if the coordinates for Channel *268C3 at the Dalles are modified to those specified in their "global solution." Common Ground/Combined submit that Commission precedent favors channel allotment resolutions, such as its "global solution," which maximize the number of communities that receive new local transmission outlets and upgraded facilities, citing Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986) (Section 307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one).

9. If the global solution is not adopted, Common Ground/Combined point out that when a choice must be made between upgrade and new allotment proposals, and where, as here, no first or second aural reception or first local transmission service is involved, the Commission compares and weighs all relevant engineering and socio-economic factors, such as the number of local services, the need for or lack of public radio service, the relative size of the communities and a comparison of the areas and populations within the predicted gain areas. In support, it cites Greenup, KY and Athens, OH, supra, note 4, and Neenah-Menasha, Rhinelander and Rudolph, WI, 7 FCC Rcd 4594 (1992). They acknowledge that the allotment of Channel 268C at Corvallis would result in a greater population gain. However, they argue that there are several reasons why the proposed allotments at Banks and The Dalles would better serve the public interest. First, they state that the Corvallis allotment, if adopted alone, would provide service to a significantly smaller service area (9,490 square kilometers vs. 13,075 square kilometers). Second, the Corvallis proposal would provide service to only 20.5% more people (325,969 persons vs. 270,406 persons). Common Ground/Combined submit that where the population advantage is "this small" and other factors favor grant of their proposals, the Commission should not give dispositive weight to the population gain factor. Third, they again assert that the allotment at The Dalles would provide the community of 11,060 persons with its first local noncommercial educational allotment. This fact, states Common Ground/Combined, is specifically identified as a factor to be taken into account in making a determination between competing proposals, citing Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92, n. 8 (1982). Finally, they submit that MBI's request for a full Class C upgrade should be denied because they had been granted a construction permit (BPH-900730IC) on July 9, 1991, for a Class C upgrade which they permitted to lapse without any construction having taking place. The Commission cancelled the permit by letter dated August 19, 1993. Common Ground/Combined argue that MBI has forfeited the right to claim any preference for its proposed full Class C upgrade, having "so recently misused the Commission's processes." In other words, they believe that since MBI has already had one chance to upgrade its station and did not do so, Common Ground should be given an opportunity to provide Banks with an upgraded service and The Dalles should be given an opportunity to receive its first local noncommercial educational service.

10. After the record closed, American Radio and MBI filed a Joint Request for Approval of Agreement. This agreement resolves their differences and seeks the following relief from the Commission:

(a) Modification of MBI's application to propose that Station KFLY's channel at Corvallis be changed from Channel 268C2 to Channel 268C1 (instead of Channel 268C).
(b) Commission approval of: (1) substitution of Channel 268C1 for Channel 268C2 at Corvallis, without the issuance of an Order to Show Cause to MBI because it agrees to the frequency change; (2) substitution of Channel 298C1 for Channel 298C2 at Banks, and (3) substitution of Channel 269C2 for Channel 298C2 at Redmond; and
(c) Approval of the agreement in which ARS agrees to pay MBI $950,000.00 as consideration for MBI's expenses in connection with the proposed frequency change of Station KFLY and the preparation, filing, and advocacy of MBI's application, and as additional consideration for agreement to modify its application to specify Channel 268C1.

11. American Radio and MBI contend that the agreement to modify MBI's application is not a request for withdrawal or dismissal of an "'expression of interest'" within the meaning of Section 1.420(j) of the Commission's Rules.[11] They state that this is so because (1) MBI did not file its application as an "expression of interest" in this consolidated proceeding, (2) MBI did not intend that its application should or would be treated as related to these proceedings,[12] and (3) the upgrade of Station KFLY from a Class C2 to a Class C1 channel is no more than a minor modification of its application because the increase in potential audience will fall only about 30,000 persons short of that expected from an increase to Class C facilities.

12. American Radio and MBI also contend that the provisions of Section 73.3525 of the Commission's Rules governing the removal of conflicts between mutually exclusive construction permit applications is not applicable here because there is only the application of MBI involved. Thus, they argue that there is no payment "cap" placed by the Commission's Rules or policies on the "unique" type of settlement contemplated herein, and therefore request that the

[11] Section 1.420(j) states that when an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, the party must file a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal and an affidavit setting forth a certification that neither the withdrawing party or its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the withdrawal or dismissal, the exact nature and amount of any consideration received or promised, an itemized accounting of the expenses for which it seeks reimbursement, and the terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

[12] MBI's application was filed on the same day that the Notice of Proposed Rule Making was released in MM Docket 96-7 and seven days before the Commission released the Notice of Proposed Rule Making in MM Docket 96-12.

Commission approve the settlement agreement without examination of any itemization of expenses. Finally, they state that the agreement stipulates that the settlement is void unless the Commission approves the entire dollar figure.

13. MBI and American Radio jointly filed further comments following the Commission decision in Gonzales Broadcasting, Inc. ("Gonzales"), 12 FCC Rcd 12253 (1997). In Gonzales, the Commission waived Section 73.3525(a)(3) of the Rules which prohibits paying a dismissing applicant more than its reasonable and prudent expenses and approved a settlement agreement among mutually exclusive applicants for an FM radio license for a new station in Mableton, Georgia. As pointed out by MBI and American Radio, this action was taken in accordance with the directive of Congress as set forth in Section 3002(a)(3) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).[13] While acknowledging that Section 3002(a)(3) pertains to pending construction permit applications, MBI and American Radio point out that the Commission in Gonzales stated that it would "'look favorably' on requests to waive certain other policies 'where this would serve to facilitate settlement.'" supra. at 12255. Thus, while they still argue that neither Section 73.3525(a)(3) nor Section 1.420(j) apply to the settlement agreement in this proceeding, they urge that the same policy of waiving Section 73.3525(a)(3) and/or Section 1.420(j) of the Commission's Rules should be applied here so as to further the public interest benefits accruing from the resolution of the conflicting requests. Hurricane also filed comments in response to MBI and American Radio's further comments restating its concurrence with the allotment of Channel 269C2 to Sun River.

Discussion

14. As an initial matter, we find that the settlement agreement cannot be approved because it specifies monies to be paid in excess of the legitimate and prudent expenses incurred by MBI in preparing and prosecuting its application. We disagree with American Radio and MBI that the proposed settlement between the two parties does not fall within the purview of Section 1.420(j) of the Rules. The MBI application proposing Class C facilities at Corvallis is a counterproposal within the ambit of Section 1.420(j) of the Rules. In Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes ("Abuses of Commission Processes"), 5 FCC Rcd 3911 (1990), recon. denied, 6 FCC Rcd 3380 (1991), the Commission specifically stated its concern for potential abuse by filing an expression of interest in allotment proceedings either advanced as a counterproposal or in a "conflicting filing with a potential equivalent to that of a counterproposal."[14] The MBI application was filed by the comment date in this proceeding and therefore is "functionally

[13] Section 3002(a)(3) of the Balanced Budget Amendment authorizes the Commission to "waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997."

[14] 5 FCC Rcd at 3914.

equivalent" to a counterproposal. This view is reinforced by the 1992 action in which the Commission stated that applications filed after the receipt of a conflicting petition for rule making but before the cut-off date for the filing of initial comments would be accepted as a counterproposal in that proceeding.[15]

15. In the proposed settlement, MBI argues that amending its application proposing Class C facilities to propose Class C1 facilities is only a "minor modification" of its proposal and Section 1.420(j) should not apply. Again, we disagree. The fact remains that MBI has withdrawn a conflicting Class C proposal "functionally equivalent" to a counterproposal. There is no provision in Abuses of Commission Processes which would permit a proponent to submit a conflicting proposal and then modify or downgrade it in exchange for consideration in excess of its legitimate and prudent expenses. In such situations, there is a clear potential for abuse of process within the stated concern of the Commission. Likewise, whether or not MBI intended for its application to be considered in conjunction with these rule making proposals at the time it filed the application is not relevant. The application speaks for itself as an expression of interest in the use of Channel 268C at Corvallis, and the Commission's Rules require that the mutually exclusive application be considered as a counterproposal in these proceedings. Although it is possible that the conflicting application was filed without the applicant being aware of the mutually exclusive petitions, this does not lessen the Commission's concern that our application and rulemaking processes not lend themselves to abuse by permitting unlimited settlement payments. We are also unpersuaded that the Commission's decision in Gonzales, supra, is applicable in this situation. The Budget Reconciliation Act of 1997, upon which Gonzales is based, clearly concerns only the resolution of pending comparative licensing cases. This proceeding concerns mutually exclusive requests for the allotment of FM channels to various communities. Only after this proceeding is concluded would the allotments be the subject of comparative applications for construction permits and/or licenses. Therefore, we find that the Congressional directive allowing waiver of the Commission's Rules to allow parties to enter into agreements which include unrestricted financial payments to resolve conflicts between mutually exclusive applicants is limited solely to those situations involving applications for construction permit, not petitions to allot channels.[16]

16. Therefore, we will comparatively consider the proposed allotments at The Dalles and Banks versus Corvallis, consistent with the allotment priorities set forth in Revision of FM

[15] Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4743 (1992); recon. granted in part, 8 FCC Rcd 4743 (1993).

[16] Likewise, MBI and American Radio's reliance on language in Gonzales that we would "look favorably" on requests to waive certain policies where this would serve to facilitate settlement is misplaced. While the Commission did state that it would consider waiving other rules to facilitate settlements, the Commission expressed this view with respect to "cases designated for hearing." In other words, it would consider waivers of other rules to facilitate settlement of comparative hearings, not allotment rulemaking proceedings.

Assignment Policies and Procedures, supra.[17] We will not include Sunriver in the comparison because Channel 224C2 can be allotted to the community regardless of whether Channel *268C3 is allotted to The Dalles as well as Channels 298C1 and Channel 269C2 at Banks and Redmond, respectively, or if Channel 268C is allotted to Corvallis.

17. As noted earlier, none of the allotments in contention would provide any first or second aural reception service or first local aural transmission service. Therefore, we have examined the proposals under the fourth allotment priority, that is, "other public interest considerations." Under this criteria, we find that the public interest would be best served by allotting Channel *268C3 to The Dalles, as the community's first local noncommercial educational service, rather than allotting Channel 268C in lieu of Channel 268C2 at Corvallis and modifying Station KFLY's license accordingly.[18] We recognize that The Dalles currently receives local noncommercial educational service from an FM translator licensed to Oregon Public Broadcasting. However, the Commission considers translator services to be secondary services, and, as such, are not considered in determining service available to a community. See, e.g., Coos Bay, Oregon, 8 FCC Rcd 7088 (1993). Translator stations may continue to operate so long as no interference is caused to any television or commercial FM broadcast station. Therefore, while The Dalles currently receives noncommercial educational service from the translator station at this time, this is not a factor which we give weight to in allotment proceedings. MBI argued that LifeTalk's statement of intent to apply for the channel was insufficient since it did not specifically state that it would apply for the channel with the necessary taller than usual tower to overcome intervening terrain obstructions. We disagree. The Notice clearly stated that a taller than usual tower would be required to provide all of The Dalles with the required 70 dBu signal. Petitioner was requested to affirmatively state that it would apply for the channel and construct a station with the necessary facilities. We believe that LifeTalk did this when it responded to the Notice with the statement that it would apply for the channel, if allotted. Although for absolute clarity, it would have been better phrased if LifeTalk had included the phrase "with the necessary taller tower" or "with a tower of at least 209 meters," we believe that LifeTalk's statement, in response to the condition set forth in the Notice, constitutes an adequate response. However, in any event, we find that this is a moot issue since we are allotting Channel *286C3 to The Dalles at the transmitter site proposed in the global solution which does not require the use of more than conventional technical facilities.[19]

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[17] The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weigh is given to priorities (2) and (3).

[18] As stated in the Notice in MM Docket 96-12, noncommercial educational stations generally operate within the reserved portion of the FM band (Channels 201-220). However, exceptions to this policy are made where channels are unavailable because of foreign (Canadian or Mexican) allotments or potential interference to the operation of VHF TV Channel 6 stations. In this case, there is no channel available within the reserved portion of the band which would not cause prohibited interference to TV Channel 6 Station KOIN at Portland, Oregon.

[19] Although the approval of LifeTalk is not required before the Commission can allot a channel at a site different from that proposed by the petitioner, where, as here, the channel will be open for application by all interested parties, we note that LifeTalk filed comments in response to the global solution stating that it has no objection to

18. We acknowledge that the upgrade of Station KFLY at Corvallis would provide an additional reception service to a larger population than would the combined upgrade of Station KBBT-FM at Banks and the new allotment of Channel *268C3 at The Dalles. However, the allotment of Channel *268C3 at The Dalles represents not only a first noncommercial service to the community but also the provision of a new primary service while the upgrading of Station KFLY at Corvallis represents only an expanded service by an existing voice. As the Commission has consistently found, the provision of a new primary service is of a greater public benefit than the expansion of an existing one. See Benton, Arkansas, et al., 3 FCC Rcd 4840(1988), recon. denied 7 FCC Rcd 2555 (1992), Andalusia, Alabama, 49 FR 32201, August 13, 1984 (states policy that a modification of a license to a higher class channel does not provide as great a public interest benefit as that of a new primary service). Further, none of the population within the Corvallis gain area is unserved or underserved, with the entire population receiving service from at least five fulltime aural stations. Thus, we are unable to find that the upgrade at Corvallis, with its larger gain population, would outweigh the public interest benefit derived from the provision of a first local noncommercial educational service at The Dalles. Since the allotment of Channel 298C1 at Banks and Channel 269C2 at Redmond can be accomplished in concert with the allotment at The Dalles and Sunriver, we will also grant this proposal.

19. Combined, by its comments, has consented to modification of Station KLRR's license to specify operation on Channel 269C2 in lieu of Channel 298C2 at Redmond. In conformance with Commission policy, American Radio Systems License Corp, licensee of Station KBBT-FM, Banks, Oregon, is required to reimburse the licensee of Station KLRR for the reasonable costs associated with its change of channel.

Technical Summary

20. Channel 298C1 can be allotted to Banks in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KBBT-FM's license. Channel 269C2 can be allotted to Redmond at the licensed site of Station KLRR. Channel *268C3 can be allotted to The Dalles with a site restriction of 20.3 kilometers (12.6 miles) east because it does not require the use of more than conventional facilities to provide the entire community with a city-grade 70 dBu signal. Channel 224C2 can be allotted to Sunriver without the imposition of a site restriction.[20] Canadian concurrence in the allotment of Channel 298C1 at Banks has been received since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

21. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and

the change in reference coordinates.

[20] The coordinates for Channel 298C1 at Banks are 45-31-22 North Latitude and 122-45-07 West Longitude. The coordinates for Channel 269C2 at Redmond are 44-04-41; 121-19-57. The coordinates for Channel *268C3 at The Dalles are 45-34-00; 120-55-00. The coordinates for Channel 224C2 at Sunriver are 43-52-00; 121-30-00.

(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 May 18, 1998the 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:

City	Channel No.
Banks, Oregon	298C1
Redmond, Oregon	269C2, 275C1
The Dalles, Oregon	224C3, 249C2, *268C3, 283C
Sunriver, Oregon	224C2

22. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of American Radio Systems License Corp., for Station KBBT-FM, Banks, Oregon, IS MODIFIED to specify operation on Channel 298C1, in lieu of Channel 298C2, 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).

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

(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.

23. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Combined Communications, Inc. for Station KLRR, Redmond, Oregon, IS MODIFIED to specify operation on Channel 269C2 in lieu of Channel 298C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KLRR's license, BLH-940930KA, 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-940930KA, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

24. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report

and Order by Certified Mail, Return Receipt Requested, to the following: Combined Communications, Inc., Station KLRR, 4222 Commerce Street, Eugene, Oregon 97402 and Madgekal Broadcasting, Inc., Station KFLY, P.O. Box K, Corvallis, Oregon 97339..

25. 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, American Radio Systems License Corp, licensee of Station KBBT-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/or upgrade.

26. A filing window for Channel 224C2 at Sunriver, Oregon, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order. However, since the allotment of Channel *268C3 at The Dalles, Oregon, has been reserved for noncommercial educational use, applications for Channel *268C3 at The Dalles may be filed and will be processed in accordance with the cut-off procedures for noncommercial educational FM applications.

27. IT IS FURTHER ORDERED, That the application (BPH-960206IE) filed by Madgekal Broadcasting for a one-step upgrade for Station KFLY(FM), Corvallis, Oregon, IS DENIED.

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

29. 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