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DISPATCHED BY **Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Dayton, Incline Village and Reno, Nevada))

MM Docket No. 99-229

RM-9479

NOTICE OF PROPOSED RULE MAKING**Adopted: June 9, 1999****Released: June 18, 1999**

Comment Date: August 9, 1999

Reply Comment Date: August 24, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Salt Broadcasting, L.L.C., licensee of Station KTHX-FM, Incline Village, Nevada, and Americom Las Vegas Limited Partnership, licensee of Station KRNO-FM, Reno, Nevada ("petitioners"). Petitioners request the substitution of Channel 261C1 for Channel 261C2 at Incline Village and its reallocation to Dayton, as the community's first local aural service, the modification of Station KTHX-FM's license to specify the higher class channel and Dayton as its community of license, and the reallocation of Channel 295C from Reno to Incline Village and the modification of KRNO-FM's license to specify Incline Village as its community of license. Petitioners state that they will file applications for their respective channels, if allotted.

2. Petitioners seek the upgrade and changes in community pursuant to the provisions of § 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of their proposal, petitioners state that Dayton is listed in the 1990 Census and credited with a population of 2,217 persons. They also state that Dayton has its own post office and zip code, its own police force, jail and courthouse, several banks, an "extensive" school system comprised of two elementary, one intermediate and one high school, a local library, and a volunteer fire house. In addition to providing Dayton with its first local aural service, petitioners state that the reallocation of Station KTHX-FM, as a Class C1 station, would provide 24,146 persons within a 7,106 square kilometer area with an additional radio service while only 4 people within a 12

square kilometer area would lose service.¹ The petitioners also contend that the entire gain and loss areas are well served, with at least 10 reception services.

3. In order to prevent the loss of Incline Village's sole local aural service, petitioners also request the reallocation of Channel 295C from Reno to Incline Village and the modification of Station KRNO-FM's license accordingly. They state that not only will Station KRNO-FM replace the service currently being provided to Incline Village by Station KTHX-FM, but that it will be replaced by a superior Class C service. Further, as no change in Station KRNO-FM's presently licensed transmitter site is being proposed, petitioners state that there will be no loss or gain in reception service. As to the loss of a transmission service at Reno, petitioners point out that the community will continue to be well-served by the remaining seven AM and six FM stations. Therefore, petitioners assert that the proposed upgrades and reallocations would serve the public interest consistent with the requirements of Section 307(b) of the Communications Act of 1934, as amended, and further the Commission's allotment priorities, as it would provide a first local aural transmission service to Dayton without depriving Incline Village of its sole local service.²

4. We believe petitioner's proposal warrants consideration since the reallocation of Channel 261 from Incline Village to Dayton could provide the community with its first local aural service and also enable Station KTHX-FM to expand its coverage area. Where stations seek to change their community of license, such as here, the Commission is concerned about the migration of stations from rural to urban areas. In this case, according to a staff analysis, Station KTHX-FM, as an Incline Village station, presently provides a 70 dBu signal to 77.1% of the Reno Urbanized Area and this percentage will increase to 87.7% if Station KTHX-FM is reauthorized as a Dayton station. Based upon the degree of coverage presently provided by Station KTHX-FM to the Reno Urbanized Area, we do not believe that the request to change the station's community of license to Dayton requires the submission of additional information demonstrating the independence of Dayton from Reno pursuant to a Tuck analysis.³ See Boulder

¹ Petitioners state that the engineering study for Channel 261C1 at Dayton assumes full Class C1 facilities from a transmitter site atop McClellan Butte (39-15-34 NL; 119-42-16 WL). However, they note that use of this site would require Station KTHX to operate with a directional antenna in order to avoid a short-spacing to Stations KQOD, Channel 261A, Stockton, CA, KRCX, Channel 360B, Marysville, CA, KCIV, 260B, Mt. Bullion, CA, and KSPY, Channel 262A, Quincy, CA. However, recognizing that the Commission does not allow the use of directional antennas to comply with the required minimum distance separation requirements at the allotment stage, they have proposed a fully-spaced site 36.8 kilometers northeast of Dayton, at coordinates 39-29-27 NL; 119-19-03 WL.

²The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

³ See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General, Inc. (KFRC) ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). KFRC and Tuck clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," that is, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent

and Lafayette, Colorado, 12 FCC Rcd 583 (1997). Because the change in community from Reno to Incline Village for Station KRNO-FM does not involve a change in transmitter site and because the station is currently licensed to serve the center city of the Urbanized Area in question, we find that a Tuck showing for this portion of the proposal also is not necessary.

5. We note that petitioners did not base their gain and loss studies for Channel 261C1 at Dayton on the allotment coordinates proposed in the petition (39-29-27 NL; 119-19-03 WL) but rather on the site which they say they actually intend to apply for atop McClellan Butte (39-15-34 NL; 119-42-16). However, according to the staff's initial engineering review, use of the McClellan Butte site would be short-spaced to Station KCIV, Channel 260B, Mount Bullion, CA, Station KRCX-FM, Channel 260B, Marysville, CA, Station KQOD, Channel 261A, Stockton, CA, and Station KSPY, Channel 262A, Quincy, CA. Therefore, petitioner must submit an application seeking to use the equivalent protection provisions of Section 73.215 of the Commission's Rules. However, as the Commission has stated in the past, channel allotments are made pursuant to the spacing requirements set forth in Section 73.207 of the Rules and the use of the provisions of Section 73.215 is permissible only at the application stage. See Princeton and Elk River, MN, 13 FCC Rcd 22806 (1998) and Edenton, Columbia and Pine Knoll Shores, NC, 11 FCC Rcd 7531 (1996). Therefore, petitioners are requested to provide loss and gain showings based on the fully spaced coordinates proposed in their petition for rule making.

6. We also propose to modify the license of Station KRNO-FM, Channel 295C, to specify Incline Village in lieu of Reno as its community of license and the license of Station KTHX-FM to specify operation Channel 261C1 and Dayton in lieu of Incline Village as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for use of either of these channels at Incline Village or Dayton.

7. Channel 261C1 can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 36.8 km (22.9 miles) northeast to accommodate petitioner's desired transmitter site. Channel 295C can be allotted to Incline Village with a site restriction of 10.1 kilometers (6.3 miles) northeast, which represents Station KRNO-FM's presently licensed transmitter site.⁴

8. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the Urbanized Area of the city. Third, the Commission determines the interdependence of the suburban community with the central city.

⁴ The coordinates for Channel 261C1 at Dayton are 39-29-27 NL; 119-19-03 WL. The coordinates for Channel 295C at Incline Village are 39-18-38 NL; 119-53-01.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Dayton, Nevada	--	261C1
Incline Village, Nevada	261C2	295C
Reno, Nevada	225C, 238C, 269C3,	225C, 238C, 269C3,
	271C3, 283C, 289C,	271C3, 283C, 289C,
	295C	

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before August 9, 1999, and reply comments on or before August 24, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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11. 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.

12. 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
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found 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 PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.