

Federal Communications Commission

DA 99-1236

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-239
Table of Allotments,)	RM-9658
FM Broadcast Stations.)	
(Johannesburg and Edwards, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 16, 1999

Released: June 25, 1999

Comment Date: August 16, 1999

Reply Comment Date: August 31, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Adelman Communications, Inc. ("petitioner"), licensee of Station KEDD(FM),¹ Channel 280B1, Johannesburg, California,² requesting the substitution of Channel 280A for Channel 280B1 at Johannesburg, the reallocation of Channel 280A to Edwards, California, as that community's first local transmission service, and modification of its authorization accordingly. Petitioner stated its intention to effectuate the changes reflected in its proposal.

2. Petitioner seeks to invoke the provisions of Section 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 ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation of Channel 280A to Edwards (population 7,423),³ a Census Designated Place that is not within an urbanized area, is mutually exclusive with the current use of Channel 280B1 in Johannesburg (population 306). The distance between Johannesburg and the petitioner's proposed site at Edwards is 59.9 kilometers (37 miles) whereas a distance of 143 kilometers (89 miles) is required in this instance. Petitioner states that operation on Channel 280A with maximum facilities at its

¹Formerly Station KRAJ(FM). Petitioner's request to change the call letters to KEDD(FM) was granted effective November 1, 1998.

²Petitioner advises that is also the licensee of Radio Stations KLOA(AM), and KLOA-FM, Ridgecrest, California.

³Population figures reported herein were taken from the 1990 U.S. Census.

proposed site at Edwards would result in the provision of a 70 dBu signal over the entire community.

3. In further support of the proposal, petitioner advises that although Edwards is co-extensive in physical boundaries with Edwards Air Force Base ("Base"), the Commission has previously determined that U.S. military installations may be considered bona fide communities for allotment purposes. See Camp Lejune, North Carolina, 42 FR 45002 (Broadcast Bureau, 1977).⁴ See also, Fort Rucker and Geneva, Alabama, and Blakely, Georgia, 5 FCC Rcd 37, 67 RR (1990). Petitioner reports that while the 1990 U.S. Census credits Edwards with a population of 7,423 persons, based upon information obtained from the Edwards Public Affairs Office,⁵ the military installation contains approximately 19,800 people (*i.e.*, 800 military officers, 4,000 enlisted personnel, 9,000 civilian employees, and approximately 6,000 spouses and children of military personnel).

4. Although Edwards is primarily a military installation, petitioner advises that it is comparable to a small community. In that regard petitioner claims that Edwards contains all of the necessary indicia to meet the needs of its residents. Specifically, petitioner reports that Edwards contains numerous retail outlets, some of which are managed by the Base while others are private concessions. Among the retail outlets available to Base personnel are the Four Seasons Store (a variety store),⁶ a pet grooming and supply facility, a barber and beauty shop, a florist, laundry and dry cleaners. Further, petitioner reports that Edwards contains educational facilities from preschool through senior high, all of which are under the jurisdiction of the Muroc Unified School District which serves Edwards and North Edwards. Edwards also has adult education and skills development centers, a Base Library and an Aerospace Museum. Transportation is provided on-base by a Base taxi, while a shuttle service provides transportation to the nearby communities of Lancaster and Palmdale, California, an urbanized area. Other community indicia at Edwards include a base hospital, an Aerospace medical office, optometry and dental clinics, and a Red Cross medical center. Veterinary services are also located at Edwards. Police and fire services are provided by the Base Command. Moreover, petitioner reports that Edwards has its own post office (zip code 93523). Employment services are available at Edwards from several government sources as well as on-base contractors. Additionally, petitioner advises that Edwards contains churches, restaurants, recreational facilities, and social organizations. Local print media is provided by the Desert Wings, a weekly newspaper published by the Base Public Affairs Office.

⁴While the Commission affirmed the Bureau's determination that military bases may be considered communities for allotment purposes, the allotment proposal to Camp Lejeune was ultimately denied on other grounds. See 43 RR 2d 900 (1978), aff'd., 47 RR 2d 1061 (1980).

⁵Petitioner refer to an unofficial guide published in 1998 by Maricopa Publishing, Inc. entitled "EDWARDS AIRFORCE BASE".

⁶Among the items described as available at this retail facility are major appliances, furniture, sporting goods, recreational equipment, as well as lawn and garden supplies.

5. Petitioner advises that KEDD(FM) currently provides 60 dBu service to 43,123 persons in an area of 4,823 square kilometers. The proposed reallocation and downgrade of Station KEDD(FM) will result in the loss of service to 40,203 persons in an area comprising 4,440 square kilometers. However, according to petitioner's engineering statement, an analysis of the loss area indicates that the proposed reallocation will not result in the creation of any white or gray areas. This is attributed to the fact that Ridgecrest Stations KZIQ(FM), Channel 224B1, and KLOA(FM), Channel 285B1, are co-located with Station KEDD(FM), and each provides reception service to the entire 60 dBu service area of Station KEDD's present operation. Additionally, AM Station KUZZ, Bakersfield and Station KAVL, Lancaster, each provide 0.5 mV/m service to the entire 1.0 mV/m contour of Station KEDD(FM) at Johannesburg. Further, petitioner reports that 99% of the area which will lose service if Station KEDD(FM) is reallocated will continue to receive service from at least five licensed aural services. While the proposed reallocation will result in the creation of an area comprising 44 square kilometers that receive only four stations, the engineering analysis states that a population analysis conducted using the block centroid retrieval method shows that entire area is unpopulated. However, this area will receive 60 dBu service from new noncommercial Station KGBM, Channel 209B, Randberg, California (File No. BPED-910312JH). Therefore, the proposed reallocation will not result in the creation of any underserved areas.

6. Additionally, petitioner advises that assuming maximum Class A facilities at the allotment reference site for Channel 281A at Edwards, Station KEDD(FM) could provide service to 28,871 persons in an area of 2,544 square kilometers. Petitioner urges that adoption of its proposal would result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982),⁷ as the reallocation would provide the larger community of Edwards with its first local aural transmission service (priority three) whereas Johannesburg, the smaller community, would retain local aural transmission service from fulltime Station KBHM(FM), Channel 265A (priority four).

7. We believe the petitioner's proposal warrants consideration as the reallocation request could provide Edwards with its first local aural transmission service without depriving Johannesburg of local service. Petitioner's proposed operation on Channel 280A with maximum Class A facilities at its intended transmitter site would result in the provision of 60 dBu service to 28,871 persons in an area of 2,544 square kilometers. Additionally, the proposal will not result in the creation of any white or gray areas. Based upon the petitioner's engineering statement, the gain area comprises 25,951 persons and an area of 2,161 square kilometers. Moreover, as this proposal is not impacted by an urbanized area, the requested reallocation is not subject to the provisions of additional information responsive to a Tuck analysis.⁸

⁷The 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 weight is given to priorities (2) and (3).]

⁸See Huntington Broadcasting Co. v. F.C.C., 192 F.2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

8. Channel 280A can be allotted to Edwards, California, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commissions' Rules, at the petitioner's specified site located 9.2 kilometers (5.7 miles) southeast of the community at coordinates 34-59-40 NL and 117-59-32 WL. As Edwards is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission must obtain the concurrence of the Mexican government in the proposal.

9. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Edwards, California	--	280A
Johannesburg, California	265A, 280B1	265A

10. 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.

11. Interested parties may file comments on or before August 16, 1999, and reply comments on or before August 31, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

David M. Hunsaker, Esq.
 John C. Trent, Esq.
 Putbrese, Hunsaker & Trent, P.C.
 100 Carpenter Drive, Suite 100
 P.O. Box 217
 Sterling, VA 20167-0217

12. 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), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, 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 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 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 Procedures. 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 proposal(s) 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 Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.