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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of:)
)
Amendment of 47 C.F.R. § 73.202(b))
Table of FM Allotments)
(Johannesburg and Edwards, CA))
)
To: The Chief, Allocations Branch)
Policy and Rules Division)

MM Docket No. 99-239

RM-9658

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS IN OPPOSITION TO PROPOSED RULE MAKING

Regent Communications, Inc. ("Regent"), by counsel, respectfully submits the following comments in opposition in the above-captioned proceeding. These comments are submitted pursuant to the Commission's Notice of Proposed Rule Making released June 25, 1999 (the "NPRM").

BACKGROUND

The NPRM was issued in response to a Petition for Rule Making (the "Petition") filed by Adelman Communications, Inc. ("Adelman"). The Petition asks the Commission to amend the FM Table of Allotments to: (i) downgrade Channel 280B1 to a Class A facility, and (ii) reallocate the downgraded channel from Johannesburg, California, to Edwards Air Force Base, California ("Edwards AFB"). In conjunction with the proposed reallocation, Adelman seeks to change the community of license for Station KEDD(FM), presently operating on Channel 280B1, from Johannesburg to Edwards

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AFB.¹ For the reasons set forth below, the Commission should not make the proposed changes to the FM Table of Allotments.

DISCUSSION

The proposed reallocation would not be in the public interest. As the Commission has repeatedly emphasized, “[t]he public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another.” *Modification of FM and TV Authorizations to Specify a New Community of License*, MO&O, 5 FCC Rcd 7094, 7097 (1990); *see also Eatenton, et al.*, R&O, 6 FCC Rcd 6580, 6586 (1991), *app. for rev. pend.* (“the weight to be accorded the public’s expectation is substantial”). This “substantial weight” given a community’s expectation of continued service applies even when the proposed reallocation would provide a first local service, as Adelman asserts is the case here. *See generally Blackville, et al.*, 2nd R&O, 7 FCC Rcd 6522 (1992); *Ravenswood, et al.*, R&O, 7 FCC Rcd 5116 (1992).

Adelman acknowledges that its proposal would cause a loss of reception service to 40,203 persons (nearly all of the 43,123 persons presently served by KEDD), while only 25,591 persons would gain a new service (only 7,423 of whom are residents of Edwards AFB who would gain first local service). (Petition at 6 n.6, Engineering Statement at 2.) Moreover, a review of the coverage map attached to the Petition reveals

¹ Certain subsidiaries of Regent are licensees of radio stations in the Antelope Valley Area, which would be affected by the proposed reallocation.

that areas KEDD would serve from its proposed location at Edwards AFB already receive reception service by up to eight existing stations.² In contrast, the reallocation would leave much of the loss area with only five reception services, and a 44 km² area *underserved* with only four.

Removal of service from a disproportionate number of persons in order to establish service in an area that is already served by a greater number of stations than the loss area is inconsistent with Commission precedent. Nor can a first local service preference be invoked mechanically to overcome the “significant weight” given the public’s expectation of continued service. *See Ravenswood* at 5118 (proposed reallocation to provide first local service denied where loss area received fewer signals than gain area, and where significant number of people would lose existing service). In *Ravenswood*, the Commission rejected a proposal that would have eliminated a reception service to more than 37,000 persons. Here, the reallocation proposed by Adelman would remove existing service from an even greater number of persons and, as in *Ravenswood*, leave some areas underserved.³

In addition to the above, Regent notes that, to provide the proposed coverage to all of Edwards AFB, Adelman would be required to locate its antenna in very

² Adelman’s engineering exhibit appears to show that the Edwards AFB contour is also completely encompassed by the contours of KVOV-AM and KAVL-AM; that it is almost entirely encompassed by the contours of KUTY-AM and KIXW-AM; and that certain portions of the Edwards contour are also covered by KVVQ-AM, KSZL-AM, KLOA-FM and KZIQ-FM. The map attached to the NPRM appears to include even more stations providing coverage to Edwards AFB.

³ The Commission noted in *Ravenswood* that while fourteen stations would continue to serve at least part of the loss area, some parts of the loss area would be left with as few as two reception services. *Id.*

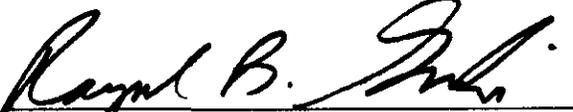
close proximity to the base. (See Petition, Engineering Statement at 1-2.) Edwards AFB is the home of the Air Force Flight Test Center, conducting flight tests of virtually every aircraft used by the Air Force, as well as NASA and other government test platforms. See Edwards AFB information web site at afftc.edwards.af.mil/ppa/ac2.html. The Petition makes no mention of whether Adelman's proposal would comply with FAA regulations or with other restrictions regarding antenna height and location in the vicinity of airports and operational Air Force facilities. Thus, the Commission is without any assurance that the service losses and gains reported by Adelman can be achieved. Without such information, the Commission is not in a position to conclude that the reallocation would serve the public interest.

CONCLUSION

For the reasons set forth above, the public interest would be best served by retaining the existing allotment. Regent urges the Commission to reject the proposed rule making and retain the existing allotment of Channel 280B1 to Johannesburg.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 16th day of August, 1999, copies of the foregoing Comments in Opposition to Proposed Rule Making were served by first-class mail upon:

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