

FCC MAIL SECTION

Federal Communications Commission

DA 00-574

MAR 20 11 36 AM '00

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-181
Table of Allotments,) RM-9584
FM Broadcast Stations.) RM-9700
(Easton, Merced and North Fork, California))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 8, 2000

Released: March 17, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making released May 21, 1999 (DA 99-971), issued in response to a petition filed on behalf of Mountain West Broadcasting ("Mountain West"), proposing the allotment of Channel 300A to Easton, California, as that community's first local aural transmission service. Supporting comments were filed individually by Mountain West, Mario Meza ("Meza"), and SAE Broadcasting Company ("SBC"), each indicating an intention to apply for Channel 300A at Easton, if allotted. San Joaquin Radio Company, LLC ("San Joaquin"), licensee of Station KAJZ(FM), filed comments¹ and a counterproposal² well as a petition for leave to supplement.³ No other comments were received.

2. San Joaquin requests the substitution of Channel 300B1 for Channel 299A at Merced, California, the reallocation of Channel 300B1 to North Fork, California, as that locality's first

¹ San Joaquin filed a petition for rule making as described in paragraph 2, infra, that is mutually exclusive with the proposed allotment of Channel 300A at Easton. As San Joaquin's proposal was not processed before the Notice herein was adopted, it has been accepted as a counterproposal. See footnote 2, infra.

² Public Notice of the counterproposal was given August 12, 1999 (Report No. 2352).

³ San Joaquin's supplemental comments serve to identify names and addresses of community indicia enumerated in its counterproposal. Proponent urges that as its petition for rule making was accepted as a counterproposal, the Commission did not have an opportunity to consider earlier whether further supporting information would be required relative to its proposed community of license, as in instances when a community issue is raised in an initial allotment petition. No objections to San Joaquin's supplemental comments were filed by any of the Easton rulemaking participants. Therefore, we will consider the supplemental comments to provide a more complete record for resolution of this proceeding. See Section 1.425 of the Commission's Rules.

local aural transmission service, and modification of its authorization for Station KAJZ(FM) accordingly. San Joaquin's proposal 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 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part "Change of Community MO&O", 5 FCC Rcd 7094 (1990). The requested allotment of Channel 300B1 to North Fork (pop. 2,541),⁴ an unincorporated community, is mutually exclusive with its existing authorization at Merced (pop. 56,216). The two communities are located 80 kilometers apart while 96 kilometers is required between first adjacent Class A-B1 channels. Moreover, as the distance between Easton and North Fork is 60.2 kilometers whereas a distance of 143 kilometers is required, San Joaquin's requested allotment at North Fork is mutually exclusive with the proposed allotment of Channel 300A at Easton.

3. In support of its proposal San Joaquin asserts that North Fork is entitled to a first local service preference. San Joaquin advises that North Fork is a self-contained community that has a chamber of commerce, fire department, library, recreation center, town hall, health care facilities, an elementary and high school, post office (zip code 93643), and a local museum. Additionally, San Joaquin reports that North Fork has several churches as well more than two dozen businesses, as identified by the North Fork Chamber of Commerce. Also, according to San Joaquin, the North Fork Community Development Council provides water, sewer, land use regulation, planning and community beautification services to the community. Further, San Joaquin remarks that according to the North Fork post office, more than 5,000 people receive their mail addressed to that postal facility. Additionally, San Joaquin advises that although unincorporated, North Fork has an elected local government, and that the North Fork Mono Rancheria Council oversees Federal programs for members of the Mono Indian tribe whose members comprise approximately 11% of the community population. Community organizations that include North Fork in their names include the Boosters, Sierra Tribal Consortium, Faculty Club, History Group, Parent-Teacher Group, Stamp Club and the Sierra Tribal Consortium. Moreover, San Joaquin advises that local media services in the community consist of the *North Fork Journal*, a weekly newspaper, and cable service provided by Ponderosa Cablevision. Additionally, San Joaquin advises that PG&E and Ponderosa Telephone comprise the largest employers in North Fork, and that a majority of the residents of that community also work there. As a final endorsement of its proposal, San Joaquin reports that a Class B1 station operating from the reference point for Channel 300B1 at North Fork would result in the provision of a 70 dBu signal to only 10% of the Fresno Urbanized Area. Therefore, San Joaquin avers that its request to change its community of license is not subject to the provision of additional information responsive to a Tuck analysis to show that North Fork is sufficiently independent of Fresno to merit a first local service preference or whether it should be credited with all of the authorized aural services in the Fresno

⁴ Population figures reported herein were taken from the 1990 U.S. Census reports.

Urbanized Area.⁵

4. In further support of the proposal San Joaquin states that its proposal would result in a preferential arrangement of allotments ("Change of Community R&O" at 4873) as it would provide a first local transmission service to North Fork without removing the sole local service at Merced.⁶ San Joaquin advises that Station KAJZ currently provides 60 dBu service to 136,681 persons in an area of 2507 square kilometers. Assuming operation with standard Class B1 facilities (25 kW ERP, 100 meters HAAT) from a preferred site located 5 kilometers from North Fork on Smiley Mountain at coordinates 37-14-39 NL and 119-33-58 WL, the proposed reallocation and upgrade will result in the provision of primary service to 620,052 persons in an area of 7998 square kilometers, representing an increase in service to 483,371 persons (+354%). As the requested reallocation of Channel 300B1 to North Fork requires a site change, the proposal will result in loss of service to 136,681 persons in an area of 2507 square kilometers. San Joaquin's engineering statement advises that its proposal will not result in the creation of any white or gray areas, and that all portions of the loss area will continue to receive full-time service from at least five licensed aural services.

5. Comparatively, San Joaquin advises that the allotment of a Class A channel at the proposed Easton reference point would result in the provision of a 70 dBu signal to 82% of the Fresno Urbanized Area. Further, San Joaquin asserts that as Easton (pop. 1,877),⁷ is a small, unincorporated suburb located 2.1 miles south of the Fresno city boundaries, absent a Tuck analysis, cited *supra*, the Easton proposal is not entitled to a first local service preference. In support of its assertion San Joaquin provided the following information to establish that Easton is not an autonomous community, but rather is dependent upon Fresno for many essential services. Among its assertions San Joaquin reports that Easton has only a few businesses, and therefore a majority of its residents work in Fresno.

⁵ See Huntington Broadcasting Co. v. FCC, 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). 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," *i.e.*, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent 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, using as evidence eight additional factors set forth in Tuck.

⁶ Petitioner's engineering statement advises that Merced will continue to be served locally by FM Stations KBKY, Channel 231A, KABX, Channel 248B, KAMB, Channel 268B, KIBG, Channel 292A, as well as AM Stations KYOS, and KTFN.

⁷ San Joaquin advises that although the 1990 Census attributes Easton with a population of 1,877, that figure includes numerous residents on family farms in the vicinity of Easton. According to San Joaquin less than 1,000 people reside within Easton's community boundaries as defined by the Fresno County Office of Public Works and Development.

No local print media is published in Easton; rather, the Fresno Bee is widely circulated in the community. Also the Twin City Times, a weekly periodical, serves several communities, including Easton. Further, Easton is devoid of local government and has no elected officials. Nor does Easton have its own telephone book. Instead, Easton telephone numbers are included in the Fresno directory. Nor does Easton have a post office. Rather, the Fresno Main Post Office, which also includes Easton in its zip code, provides mail boxes to Easton residents. Few commercial businesses are located in Easton. The community is devoid of banks, public transportation, or municipal services. The Easton Health Center provides minimal part time care to low income women and children. Further, San Joaquin asserts that Easton lacks local advertising media and is part of the Fresno advertising market. Public education for Easton residents is provided by the Washington Union School District, a part of the Fresno County Education Department. Library services are provided to Easton residents by the Fresno County Library that operates a satellite branch there 14 hours per week

6. San Joaquin asserts that the 60 dBu contour of the proposed North Fork allotment would encompass an area 215% larger with 13% more residents than the area that would receive primary service of a Class A station operating at Easton. Therefore, as its proposal would provide service to a larger population and area than would be served by the Easton proposal, San Joaquin urges its adoption to provide a first local transmission service to North Fork.

Discussion

7. After carefully reviewing the record in this proceeding, we believe that this case essentially involves a comparison between two competing first local services under our FM allotment priorities⁸ and related case precedent. However, as a threshold matter, we must first address the issue of whether our Huntington and Tuck policies should be applied to determine whether the two communities are sufficiently independent from the Fresno Urbanized Area to warrant qualifying for a first local service preference under FM priority (3).⁹ We do not believe that the Huntington and Tuck policy should be

⁸ The 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 ("Revision"), 90 FCC 2d 88 (1982).

⁹ We note that if North Fork were located within the Fresno Urbanized Area, Huntington and Tuck policies would apply regardless of the percentage of city grade coverage of the Fresno Urbanized Area. We have long held that Huntington and Tuck applies to situations when moving from a community located outside of an urbanized area to another community located within an urbanized area. See Elizabeth City, North Carolina and Chesapeake, Virginia, 7 FCC Rcd 6815 (1992) (supplemental information requested to demonstrate the independence of Chesapeake, Virginia, from the Norfolk Urbanized Area to merit a local service preference). See also, Malvern and Bryant, Arkansas, 14 FCC Rcd 3576 (1999) (Tuck showing required where proposed community is located partially within the relevant urbanized area, even though station would provide 70 dBu signal to less than 1% of the urbanized area. See also Kankakee and Park Forest, Illinois, (DA 99-2563) released December 15, 1999 (proposed relocation from Kankakee, the central city of its own urbanized area, to Park Forest, Illinois, located in the Chicago Urbanized Area, requires a showing that the community is sufficiently independent from the urbanized area to warrant a first local service preference).

applied to either proposal. First, with respect to the North Fork proposal, we note that the petitioner is proposing to reallocate its station from Merced, which is the central city of its own Urbanized Area as defined by the U.S. Census, to North Fork, a community located outside of but proximate to the Fresno Urbanized Area. However, as the proposed city-grade (70 dBu) signal of the North Fork station will cover only 10% of the Fresno Urbanized Area, under our well established policy set forth in Headland and Chattahoochee, Alabama,¹⁰ 10 FCC Rcd 10352 (1995), Huntington and Tuck do not apply since the percentage of city grade coverage is less than 50% of the Fresno Urbanized Area. Secondly, with respect to the proposed Easton allotment, while we recognize that Easton is located within the Fresno Urbanized Area, Allocation Branch policy has consistently been not to apply the Huntington and Tuck test to drop-in allotments in urbanized areas. This issue has not arisen often due to the difficulty of dropping new allotments into communities located in urbanized areas. Rather, Huntington has only been applied in the context of change of community of license proceedings or in comparative hearings involving applications, neither of which are applicable to the Easton proposal. Even in those change of community cases in which Huntington has arisen, the smaller community has been inside the urbanized area of a larger city or if proximate thereto, would provide a 70 dBu signal over 50% or more of the urbanized area, and a showing has been made of interdependency between the smaller community and the larger urban center. As explained further below, the disparate application of the Huntington and Tuck test to change of community cases, as opposed to drop-in allotments, is not decisionally significant in this case.

8. First we need to examine San Joaquin's change of community proposal to decide if it would result in a preferential arrangement of allotments. See Change of Community MO&O, *supra*. Applying those procedures, we compare the existing arrangement of allotments with the proposal using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992), *supra*. In making our comparison, the first two priorities are not applicable in this instance. No white or gray areas are involved (priorities (1) and (2)). Rather, as North Fork would receive its first local aural transmission service (priority (3)), it is favored over the retention of the allotment at Merced (priority (4)), which is served locally by six other transmission services.¹¹ As San Joaquin's proposal would result in the provision of a first local aural transmission service at North Fork, it must now be comparatively considered with the proposed allotment of Channel 300A to Easton, California, as that community's first local aural transmission service.

¹⁰ If an authorized facility requests to change its community of license to one that is outside of an urbanized area but whose signal would place a city-grade, 70 dBu signal over 50% or more of an Urbanized Area, the proponent is required to provide the same showings as currently required for those parties seeking to move to a community within an Urbanized Area.

¹¹ FM Stations KBKY, Channel 231A, KABX-FM, Channel 248B, KAMB, Channel 268B, KIBG, Channel 292A, as well as AM Stations KYOS and KTFN, are licensed to Merced.

9. The Notice did not request community information for Easton, given its status as a Census Designated Place. Although not requested, San Joaquin provided sufficient information establishing North Fork's community status for allotment purposes. As we believe each community is deserving of an allotment, a staff frequency search was undertaken to determine the availability of an alternate channel for the drop-in allotment proposal at Easton. The study revealed that Channel 300 is the only channel available. Having established that neither proposal would fulfill allotment priority one (first full-time aural service) or priority two (second full-time aural service), but each would fulfill priority three (first local service), our decision in this case must be based upon the population differences of the two communities. See, Blanchard, Louisiana and Stephens, Arkansas, 10 FCC Rcd 9828 (1995), and cases cited therein. See also Revision, supra. As North Fork (pop. 2,541) is larger than Easton (pop. 1,877), we believe the public interest would be served by allotting Channel 300B1 to North Fork as it would provide a first local aural transmission service to the more populous community. Our decision is further buttressed by the fact that each community receives at least five full-time reception services.¹²

10. In further support of the superiority of San Joaquin's proposal, the reallocation will afford it an opportunity to expand the service area capability of Station KAJZ. Moreover, the reallocation will result in an increase in primary service to 620,052 persons in an area of 7998 square kilometers, representing an increase in 60 dBu service of 483,371 persons (+354%) over the present facility at Merced that provides 60 dBu service to 136,681 persons in an area of 2507 square kilometers. Although the loss area consists of 136,681 persons in an area of 2507 square kilometers, all portions of the loss area receive more than five full-time reception services and is considered to be well served. Additionally, the reallocation will not leave Merced devoid of local service. Based upon the foregoing, we believe the public interest would benefit by substituting Channel 300B1 for Channel 299A at Merced and reallocation Channel 300B1 to North Fork, California, as requested. In accordance with the provisions of Section 1.420(g) and (i) of the Commission's Rules, we will modify the license of Station KAJZ(FM) to specify operation on Channel 300B1 at North Fork, California.

11. Channel 300B1 can be allotted to North Fork, California, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at San Joaquin's proposed site located 5.3 kilometers (3.3 miles) west of the community at coordinates 37-14-39 NL and 119-33-58 WL.

12. Accordingly, pursuant to the 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 ORDERED, That effective May 1, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

¹² According to Commission records, fifteen FM stations (6 of which are noncommercial educational stations) and at least 10 full time AM stations are licensed to Fresno. Therefore, given Easton and North Fork proximity to the urbanized area, each community benefits from the multiplicity of facilities licensed at Fresno.

<u>City</u>	<u>Channel No.</u>
Merced, California	231A, 248B, 268B ¹³ , 292A
North Fork, California	300B1

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of San Joaquin Radio Company, L.L.C. for Station KAJZ(FM) (File No. BLH-941026KC), IS MODIFIED to specify operation on Channel 300B1 at North Fork, California, in lieu of Channel 299A at Merced, California, 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), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (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.

14. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change in 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, San Joaquin Radio Company, L.L.C., licensee of Station KAJZ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license and upgrade at North Fork, California.

¹³ 47 CFR Part 73, Radio Broadcast Services, § 73.202(b), Table of FM Allotments, does not currently reflect the allotment of Channel 268B at Merced. However, Channel 268B was allotted to Merced in the original Table of Allotments, and is presently licensed at that community to Central Valley Broadcasting Company, Inc. for Station KAMB(FM) (File No. BLED971112KJ). Therefore, we will make the editorial change to the FM Table of Allotments in the context of this proceeding to reflect the allotment of Channel 268B at Merced, California. As the correction is editorial in nature, a public notice and comment proceeding is not required. See 5 USC 553(b)(A) and (B).

15. IT IS FURTHER ORDERED, That the petition for rulemaking filed by Mountain West Broadcasting to allot Channel 300A to Easton, California (RM-9584), IS DENIED.

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

17. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**