

FWS MAIL ROOM

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

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

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 9, 2000

Released: August 18, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making*, 64 FR 36322 (July 6, 1999) (DA 99-1236) issued at the request of Adelman Communications, Inc. ("petitioner"), licensee of Station KEDD(FM), Johannesburg, California, requesting the substitution of Channel 280A for Channel 280B1 at Johannesburg, the reallocation of Channel 280A to Edwards, California, as the community's first local aural service, and the modification of its authorization accordingly. Petitioner filed comments reiterating its intention to effectuate the changes in its proposal. Regent Communications, Inc. ("Regent"), High Desert Broadcasting Co. ("High Desert"), and Amaturio Group of L.A., Ltd. ("Amaturio"), filed comments in opposition to the proposal. Petitioner filed consolidated reply comments addressing issues raised by each opposition.

2. In support of its proposal, petitioner states that the community of Edwards is a community for allotment purposes. It notes that while the community is co-extensive in physical boundaries with Edwards Air Force Base, the Commission has previously determined that U.S. military installations may be considered *bona fide* communities for allotment purposes.¹ Petitioner reports that while the U.S. Census credits Edwards with a population of 7,423 persons, the military installation itself reports that it contains approximately 19,800 persons (*i.e.*, 800 military officers, 4,000 enlisted personnel, 9,000 civilian employees, and approximately 6,000 spouses and children of military personnel). In further support of the community status of Edwards, petitioner states that although Edwards is primarily a military installation, it has all the necessary indicia of community. It is a Census Designated Place, has its own zip code and post office, and police and fire services. It has schools, churches, restaurants, recreational facilities and social organizations. It also has a library, taxi service, hospital, and medical, optometry and dental clinics. It has a weekly newspaper and employment services. It has numerous business establishments, including a variety store called the Four Seasons Store, pet grooming and supplies, barber and beauty shops, florist, laundry and dry cleaners.

3. All parties in opposition argue that petitioner's proposal should be denied because it will not result in a preferential arrangement of allotments due to loss of reception service. Regent and High

¹ See *Fort Rucker and Geneva, Alabama, and Blakely, Georgia*, 5 FCC Rcd 37 (1990).

Desert also allege that the transmitter site that petitioner has proposed is not available and that even if it is available, it is too close to Edwards Air Force Base to get approval from the FAA. Amaturio argues that its proposal to reallocate Channel 224A from Avalon to Fountain Valley, California and Channel 224A from Riverside to Adelanto, California, along with related channel substitutions in Ridgecrest and Thousand Oaks, California² should be considered as a counterproposal in the instant proceeding, and that the two proposals be given comparative consideration. In the alternative, Amaturio argues that petitioner's proposal be denied based on the loss of service that would result from the grant of both proposals and the prejudice that would result to its own proposal.

4. In its consolidated reply comments, petitioner responds to the contentions made by the opposing parties. It argues that its proposal will provide a first local aural transmission service to the larger community of Edwards and that Johannesburg will retain an FM station. It argues therefore that its proposal will serve FM Allotment priority (3) and the Commission considers loss of reception service which does not involve white or gray area under lower FM Allotment priority (4). Petitioner concedes that High Desert's estimate that 1,125 persons will lose their fifth service is correct, but argues that over 4,600 underserved persons will gain a service, and therefore, irrespective of the loss of service, its proposal is in the public interest.

5. Finally, petitioner argues that opponents' arguments that its transmitter site is unavailable are speculative and are not appropriately raised at the allotment stage. Petitioner argues that there is a presumption of site availability at the allotment stage and, absent unusual circumstances,³ the Commission generally does not require detailed showings concerning availability and suitability of a specific transmitter site.

6. Discussion. As an initial matter, we will consider and deny Amaturio's request that it be considered as a counterproposal to petitioner's proposal. Although it was timely filed, Amaturio's petition is not mutually exclusive with petitioner's and therefore will not be considered.⁴ It will be considered in MM Docket No. 99-329.⁵

7. We will grant the change of community. First, we find that Edwards is a community for allotment purposes and is deserving of an allotment. We believe that this proposal will result in a preferential arrangement of allotments because it will provide first local aural transmission service to the larger community of Edwards (1990 U.S. Census population of 7,423 and an unofficial base population of almost 20,000), which serves a higher FM Allotment priority (3) and will leave an FM station in the

² These changes to the Table of Allotments have been proposed in MM Docket No. 99-329.

³ See *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *Caldwell, Texas*, 13 FCC Rcd 13722 (1998) (allotment proposals requiring a novel approach to waiver of the Commission's rules governing city-grade contours). See also, *San Clemente, CA*, 3 FCC Rcd 6728 (1988) *appeal dismissed sub nom., Mount Wilson Broadcasters, Inc. v. FCC*, 884 F.2d 1462 (D.C. Cir. 1989) (cases involving military bases and a transmitter site inside the parameters of the base and an actual study reveals that no other fully-spaced site exists outside the base).

⁴ See *McFarland and Coalinga, California*, 13 FCC Rcd 1315, n. 2 (1998); *Potts Camp and Saltillo, Mississippi*, 13 FCC Rcd 11909, n. 1 (1998).

⁵ See *Notice of Proposed Rule Making* in MM Docket 99-329, 14 FCC Rcd 19397 (1999).

community of Johannesburg, population 306 (priority (4)).⁶

8. We also believe that this change is in the public interest. Despite the parties' statements that this proposal will result in underserved areas, we note that a Commission engineering analysis shows that the entire loss area is well served with at least five services. In addition, the gain area includes some underserved areas, and will provide a first service to 794 persons, a second service to 1,170 persons, a third service to 471 persons, a fourth service to 5,934 persons, and a fifth service to 403 persons. We also note that while most of the persons currently served by Station KEDD will no longer receive service from the station,⁷ in situations such as this, in which the loss area is well served and no white or gray area is being created, the Commission has specifically declined to take into account the degree of service a licensee will maintain to its original community as a factor in deciding whether a change of community should be granted.⁸ Instead, the Commission relies solely on a determination of whether the change would result in a preferential arrangement of allotments, which we have determined will result in this case.⁹

9. With respect to the issue of transmitter site availability, petitioner correctly states that this issue is only addressed at the allotment stage in unusual circumstances, which do not exist in this case. The question of city-grade coverage is not at issue here, and the site is not within the boundaries of the military base itself.¹⁰ We will take petitioner's representations that its site was proposed in good faith and will not address the issue further.

10. Channel 280A can be allotted at Edwards at petitioner's requested site consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules with a site restriction of 9.2 kilometers (5.7 miles) southeast of the community.¹¹

11. 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 October 2, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Edwards, California	280A
Johannesburg, California	265A

⁶ The FM 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).]

⁷ 40,203 persons out of 43,123 persons served will lose service from Station KEDD(FM).

⁸ See *Report and Order* in MM Docket No. 88-526 ("Change of Community Report and Order") 4 FCC Rcd 4870, 4873 (1989).

⁹ *Id.*

¹⁰ See *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *Caldwell, Texas*, 13 FCC Rcd 13722 (1998); *San Clemente, CA*, 3 FCC Rcd 6728 (1988) *appeal dismissed sub nom.*, *Mount Wilson Broadcasters, Inc. v. FCC*, 884 F.2d 1462 (D.C. Cir. 1989).

¹¹ The coordinates for Channel 280A at Edwards, California are 34-59-40 and 117-59-32.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order*, to the following:

David M. Hunsaker, Esq.
Putbrese, Hunsaker and Trent
100 Carpenter Drive, Suite 100
Sterling, VA 20167-0217
(Counsel for petitioner)

Kevin C. Boyle, Esq.
Latham and Watkins
1001 Pennsylvania Ave. N.W. Suite 1300
Washington, DC 20004-2505
(Counsel for Regent Communications, Inc.)

David D. Oxenford, Esq.
Fisher, Wayland, Cooper, Leader, & Zaragoza
2001 Pennsylvania Ave. NW Suite 400
Washington, DC 20006-1851
(Counsel for High Desert Broadcasting Co.)

Bradford D. Carey, Esq.
Hardy & Carey
110 Veterans Blvd Suite 300
Metairie, LA 70005
(Counsel for Amaturio Group of LA, Ltd.)

13. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Adelman Communications, licensee of Station KEDD(FM), Johannesburg, California IS MODIFIED to specify operation on Channel 280A in lieu of Channel 280B1, 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.

14. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), 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, Adelman Communications, licensee of Station KEDD(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.

15. The comments and/or counterproposals filed by Regent Communications, Inc., High Desert Broadcasting Co. and Amaturio Group of LA ARE DISMISSED.

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

17. For more information regarding this proceeding, contact Victoria M. McCauley, Mass Media Bureau (202) 418-2136.

FEDERAL COMMUNICATIONS COMMISSION

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