

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

MM-62001
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

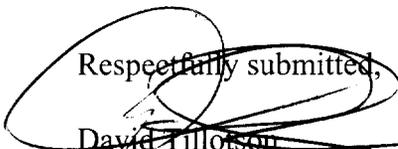
Amendment of Section 73.202(b))	MM Docket No. <u>01-11</u>
Table of Allotments)	RM-10027 and RM 10322
FM Broadcast Stations)	
(Murrieta, California))	

REPLY COMMENTS

Helen Jones, proponent of the allotment of Channel 281A at Murrieta, California, in the above-referenced rulemaking proceeding hereby replies to the Counterproposal that was submitted in the proceeding on behalf of Big City Radio - LA, LLC ("Big City").

For the reasons set out in the attached Engineering Statement of Stephen S. Lockwood, P.E., of the firm of Hatfield & Dawson, the Big City's Counterproposal is defective in numerous respects, including, in particular, its proposal to allot Channel 245A in lieu of Channel 281A at Murrieta. Accordingly, the Counterproposal must be denied and the proposal to allot Channel 281A at Murrieta should be adopted.

Respectfully submitted,


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Dated: November 5, 2001

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DATE

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Engineering Statement

This Engineering Statement has been prepared on behalf of Helen Jones ("Jones"), proponent in MM Docket No. 01-11 for the allotment of Channel 281A at Murrieta, California, as the first local service to that community.

In its counterproposal in this proceeding, Big City Radio-LA, L.L.C. ("Big City"), requests:

- a) The substitution of Channel 296B1 for Channel 296A at Arcadia, California, for its station KLYY;
- b) The substitution of Channel 281A for Channel 296A at Fallbrook, California, for its station KSYY;
- c) The substitution of Channel 295B1 at Desert Hot Springs, California, for Channel 295B at Yucca Valley, California, for Morris Communications Corporation's station KYOR, as the first local service to Desert Hot Springs, and;
- d) The allotment of Channel 245A at Murrieta, California, as the first local service to that community.

As will be demonstrated below, Big City's counterproposal to add Channel 245A at Murrieta is defective. Furthermore, the allotment of Channel 281A as first local service at Murrieta should be preferred over the allotment of Channel 295B1 as first local service at Desert Hot Springs. Finally,

Big City's proposal to create a short-spaced allotment at Arcadia would be in violation of the Commission's allotment principles.

The allotment of Channel 245A at Murrieta would be Defective

Big City claims, in the Engineering Statement accompanying its counterproposal, that the allocation of Channel 245A at Murrieta at reference coordinates NL 33° 33' 04" x WL 117° 04' 31" "meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules" (Engineering Statement at 10).

While Big City states that the allotment of Channel 245A at Murrieta will provide 70 dBu service to all of Murrieta, they provide no evidence to support this claim. Indeed, while Big City's Engineering Statement includes maps demonstrating that Channel 296B1 will provide 70 dBu service to 100% of Arcadia and that Channel 295B1 will provide 70 dBu service to 100% of Desert Hot Springs, notably absent is a corresponding map for Channel 245A at Murrieta.

The attached map exhibit depicts the 70 dBu service contours from the Murrieta Channel 281A and Channel 245A allotment sites, overlaid on a map of the city boundaries in the area. Most of the city boundaries on this map are taken from 1990 Census data. From the 1990 Census data alone, it would appear that the Channel 245A allotment would provide service to 100% of Murrieta.

However, since 1990 Murrieta has grown dramatically. In 1990, Murrieta was unincorporated, and the 1990 boundary for Murrieta shown on the map corresponds to the Murrieta Census Designated Place. Murrieta incorporated in 1991, and since that year has expanded its

boundaries and population. The current boundaries of Murrieta, taken from the 2000 Census¹, are also shown on the attached map exhibit.

Both Jones' original Petition for Rulemaking and Big City's Counterproposal were filed after the 2000 Census. Jones' original Petition was filed on October 17, 2000; Big City's Counterproposal was filed on March 12, 2001. Therefore, it is plain that it is the current boundaries of Murrieta which pertain in this proceeding, not the 1990 boundaries of the Murrieta CDP. If Big City did not bother to acquaint itself with the current boundaries of Murrieta, and instead relied on boundaries over 10 years old, that would not justify the creation of a defective allotment at that community.

It is clear from this map exhibit that, based on the current boundaries of the City of Murrieta, the allotment of Channel 245A would not provide principal community service to 100% of Murrieta. Channel 245A would provide principal community service to just 88% of Murrieta. By contrast, the allotment of Channel 281A at Murrieta will provide principal community service to 100% of Murrieta.

Murrieta should be preferred over Desert Hot Springs for First Local Service

Presuming the disposal of Big City's proposed allotment of Channel 245A at Murrieta as defective, there remains comparison of the competing proposals for first local service: Jones' proposal for Channel 281A at Murrieta, and Big City's proposal for Channel 295B1 at Desert Hot Springs.

¹See the "American FactFinder" page on the US Census web site at: http://factfinder.census.gov/servlet/BasicFactsServlet?_lang=en

In this comparison, it is Murrieta which should be preferred. The 2000 Census population of Murrieta is 44,282 persons. By comparison, the 2000 Census population of Desert Hot Springs is 16,582 persons, less than 40% of the population of Murrieta.²

The provision of first local service to the larger community of Murrieta, should be preferred over the smaller community, Desert Hot Springs.

Channel 296B1 cannot be allotted at Arcadia

Big City has proposed the substitution of Channel 296B1 for Channel 296A at Arcadia, California, for its station KLYY. Big City correctly recognizes that this upgrade will result in the creation of a short-spaced allotment at Arcadia, but nevertheless claims that the proposed allotment "satisfies allocation spacing considerations" with respect to the short-spaced stations. However, Big City has failed to support its contention that the creation of this short-spaced allotment is permissible under the Commission's Rules.

Station KLYY presently operates on Channel 296A at Arcadia, as a "pre 1964" grandfathered short-spaced station with respect to second-adjacent-channel stations KROQ Channel 294B at Pasadena, and KLVE Channel 298B at Los Angeles. Big City proposes to upgrade the Arcadia channel to Class B1 at new allotment reference coordinates which would decrease the short-spacings to KROQ and KLVE. In support of this proposal, Big City states that:

Because the existing grandfathered short-spacings would be improved as a result of the proposed arrangement of allotments,

²According to the Murrieta Chamber of Commerce, the 2001 population of Murrieta is 46,840 persons.

and because the subsequent KLYY Class B1 application for construction permit will automatically satisfy 73.213 protection requirements to both KLVE(FM) and KROQ-FM (because Section 73.213 no longer requires protection of second-adjacent channel related grandfathered short-spaced stations) the instant proposal satisfies allotment standards with respect to both KLVE(FM) and KROQ-FM. (Engineering Statement at 4)

Big City then goes on to claim *East Los Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (1985), as precedent for the Arcadia upgrade.

As an initial issue, Big City's reliance upon *East Los Angeles* is misplaced. In that case, the Commission approved the reallocation of Channel 250B from Long Beach to East Los Angeles, at new allotment reference coordinates which increased the distance to a "pre 1964" grandfathered first-adjacent-channel station on Channel 251B at San Diego. The reallocation in *East Los Angeles* was approved on the principle that, based on the new allotment reference coordinates, the idealized 60 dBu contour from the East Los Angeles allotment would not extend beyond the idealized 60 dBu contour from the existing Long Beach allotment, *the standard then in effect for the evaluation of facilities changes under §73.213 for "pre 1964" grandfathered short-spaced stations*.

That standard is no longer applies. On August 4, 1997, the Commission adopted numerous changes in its rules regarding grandfathered short-spaced stations.³ Among these changes was the elimination of the rule which proscribed facilities changes by co-channel and first-adjacent-channel "pre 1964" short-spaced stations which would extend the station's 60 dBu contour further

³See Report and Order in MM Docket No. 96-120, Grandfathered Short-Spaced FM Stations, 12 FCC Rcd 11840 (1997).

towards the short-spaced station. In its place, the Commission adopted a procedure which compares the areas and populations which would be subject to caused and received interference from the licensed and proposed facilities.

In any case, Big City's proposal does not involve a co-channel or first-adjacent-channel short-spacing, but rather a second-adjacent-channel short-spacing. More applicable, but still contrary to Big City's cause, is the aspect of *East Los Angeles* which addresses the proposed East Los Angeles allotment's second-adjacent-channel short-spacing to Channel 252A at West Covina. Despite the fact that the East Los Angeles allotment reference site would decrease the spacing to (and thereby increase the short-spacing to) Channel 252A at West Covina, the Commission approved the change because there would be no overlap of the protected and interfering contours of the two allotments.

This is hardly true of the case before us now. The proposed Arcadia Channel 296B1 allotment would be located just 43 kilometers from KROQ, and just 29 kilometers from KLVE. Since the idealized 60 dBu contour of a Class B station extends 52 kilometers, and the idealized 60 dBu contour of a Class B1 station extends 39 kilometers,⁴ it would not be possible for the Arcadia Channel 296B1 allotment to avoid interference contour overlap with KROQ and KLVE. The Arcadia allotment would have overlap, both caused and received, with KROQ and KLVE.

⁴And, indeed, the idealized 54 dBu contour of a Class B station extends 65 kilometers, and the idealized 57 dBu contour of a Class B1 station extends 45 kilometers.

In contrast to *East Los Angeles*, grant of the Arcadia 296B1 allotment would result in the creation of more interference than presently exists. Second-adjacent-channel interference is localized in the area surrounding the transmitter site of the station causing the interference. By moving the Arcadia 296B1 allotment site further from KROQ and KLVE, as proposed by Big City, the interference area will be moved into an area where the KROQ and KLVE signals are relatively weaker. Thus, when evaluated on a desired-to-undesired signal ratio basis, this move would expand the geographic area of the interference.⁵ The concurrent upgrade of the Arcadia channel would only compound this problem, by adding 6 dB to the interfering signal from Arcadia.

It is also important to note that, while Big City proposes a Class B1 upgrade of the Arcadia channel, *East Los Angeles* involved a community of license and allotment site change, but not an upgrade in station class. There have been numerous recent cases in which the Commission has approved a community of license change for grandfathered short-spaced stations,⁶ but none to our knowledge in which the Commission has approved a class upgrade for a grandfathered short-spaced station.

Big City's upgrade at Arcadia also relies on a faulty interpretation of §73.213(a)(4) of the Commission's Rules, which states that:

⁵A same-class transmitter site change of this type would nevertheless be permitted under §73.213 of the Commission's Rules.

⁶See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992), *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999), *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (Allocations Br. 1999), and *Kankakee and Park Forest, Illinois*, Report and Order in MM Docket No. 99-330 released March 23, 2001.

...there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

By Big City's interpretation, this rule provides a blanket justification for the creation of a substandard, short-spaced, Class B1 allotment at Arcadia. A review of the proceeding in which that rule was adopted, however, affirms that the Commission never intended this rule to permit station class upgrades without regard to second-adjacent and third-adjacent channel short-spacings.

In discussing the proposed rule change, at paragraph 25 of the Notice of Proposed Rulemaking in MM Docket No. 96-120, *Grandfathered Short-Spaced FM Stations*, the Commission states that "...we have no intention of relaxing second-adjacent-channel and third-adjacent-channel spacing requirements as allotment and assignment criteria..." This policy is reiterated at paragraph 25 of the Report and Order in that same proceeding.⁷

The stated purpose of the rule change was to "...permit second and third-adjacent channel grandfathered stations to *implement maximum class facilities, and/or change transmitter site* with complete flexibility on second-adjacent channel and third-adjacent channel short-spacings" (Report and Order in MM Docket No. 96-120 at 20) (emphasis added). While the new rule⁸ was

⁷This firm is well-acquainted with the intent and purpose of MM Docket No. 96-120. The Notice of Proposed Rulemaking in that proceeding was issued in response to a Joint Petition for Rulemaking filed by the engineering firms of Hatfield & Dawson; du Treil, Lundin & Rackley; and Cohen, Dippell & Everist.

⁸Technically, the restoration of the previous §73.213 rule used between 1964 and 1987.

clearly intended to allow this "limited universe" of stations to increase to maximum facilities for their class (including 6 kW equivalent operation for short-spaced Class A stations), nowhere, in either the Notice of Proposed Rulemaking or the Report and Order, does the Commission contemplate application of this rule to permit a station to upgrade to a higher class.

Indeed, with the exception of the above-referenced cases involving changes in community of license (but no upgrade) of short-spaced stations, the Commission has consistently refused to allot channels which do not meet the allotment standards in effect at the time. "It is Commission policy not to allot channels unless compliance with the Commission's technical requirements can be shown at the rule making stage to avoid the allotment of substandard frequencies." See *Wilmington, North Carolina, et al.*, 6 FCC Rcd 6969 (1991). See *Ocracoke, North Carolina, et al.*, 9 FCC Rcd 2011 (1994).

Big City has failed to make its case for the creation of a substandard, short-spaced allotment which would both cause and receive interference. The *East Los Angeles* case cited as precedent by Big City is not directly applicable to their proposal, nor was the elimination of second- and third-adjacent-channel spacing requirements in MM Docket No. 96-120 intended to be used to permit class upgrades in allotment proceedings. Therefore, the proposed allotment of Channel 296B1 at Arcadia must be denied.

Conclusions

The allotment of Channel 245A at Murrieta would be defective in that it would not provide principal community service to 100% of the City of Murrieta, as is required by §73.315(a) of the

Commission's Rules. Therefore, Big City's proposal to add Channel 245A at Murrieta must be denied.

Furthermore, the remaining first local service proposal in Big City's Counterproposal, for the allotment of Channel 295B1 at Desert Hot Springs, should be denied in favor of providing a first local service at the larger community of Murrieta.⁹

Finally, Big City's proposed allotment of Channel 296B1 at Arcadia would violate the Commission's allotment principals, in that it would create a substandard, short-spaced allotment which would both cause and receive interference.

Therefore, Jones' proposal for the allotment of Channel 281A at Murrieta should be granted, and Big City's counterproposal should be denied.

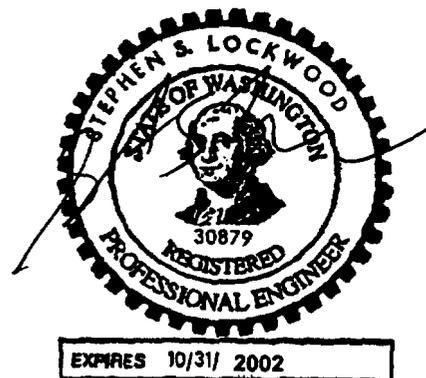
⁹As an alternative, it would be possible to modify the Desert Hot Springs Channel 295B1 allotment site to NL 34° 02' 08" x WL 116° 30' 54", just 1.5 km northeast of the allotment site proposed by Big City, far enough to provide full spacing to the continued operation of KSYF Fallbrook on its present Channel 296A. This modified allotment site would still provide 70 dBu service to 100% of Desert Hot Springs, and would have no negative impact on the gain/loss area study for KYOR which was provided by Big City. Under this scenario, Channel 281A can be assigned at Murrieta and Channel 295B1 can be assigned at Desert Hot Springs, as the first local services at those communities, salvaging a portion of the public interest benefits of Big City's counterproposal.

However, the reallocation of KYOR from Yucca Valley to Desert Hot Springs would raise a 307(b) issue in that it would remove the sole local service from Yucca Valley. The license for the only other station licensed to Yucca Valley, KYVU-AM 1420 kHz, was cancelled by the Commission on August 2, 2001. The 2000 Census populations of the two communities are nearly identical: 16,582 for Desert Hot Springs and 16,865 for Yucca Valley.

Statement of Engineer

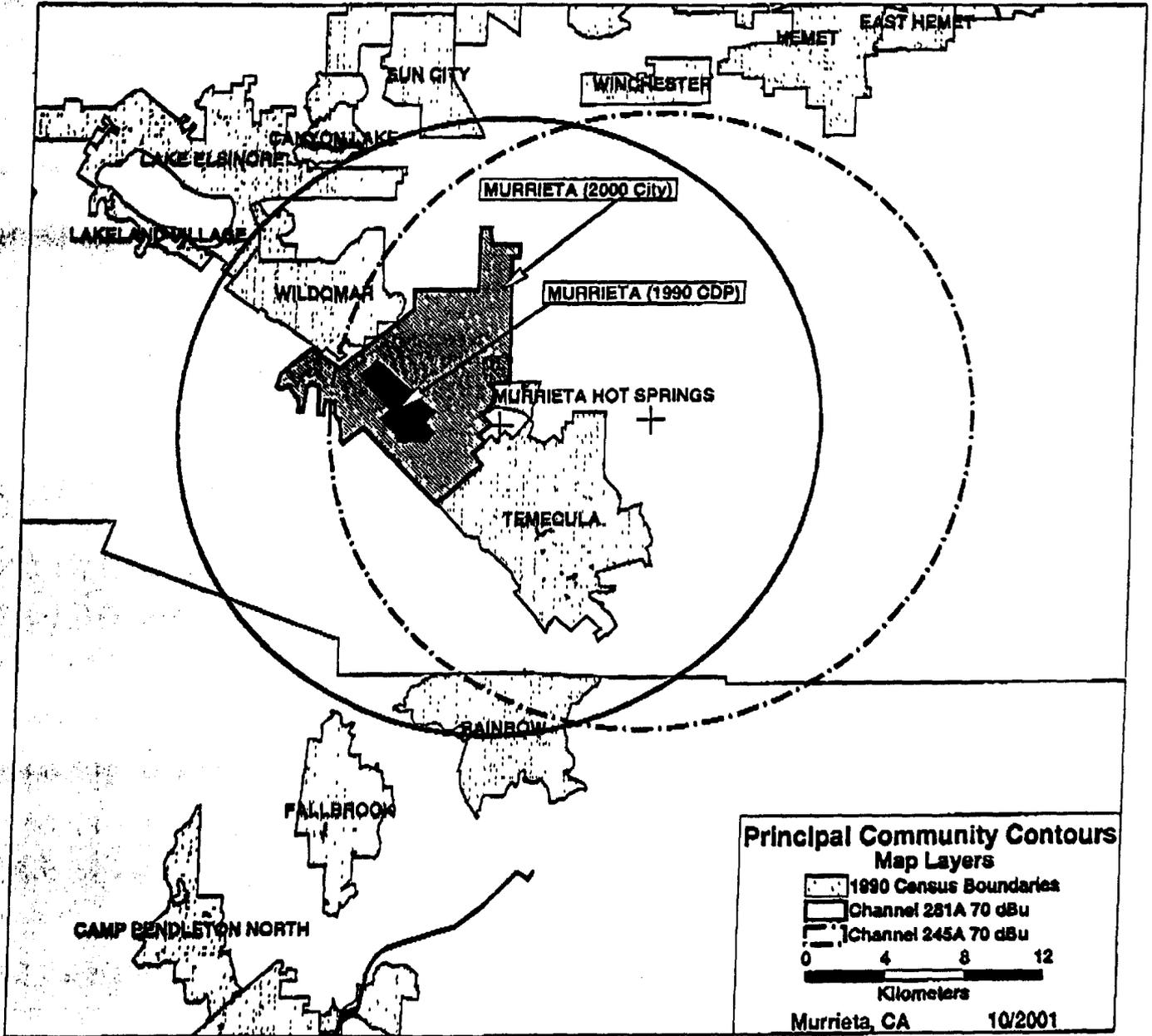
This Engineering Statement, relative to Reply Comments filed in MM Docket No. 01-11, has been prepared by Erik C. Swanson, EIT, under my direct supervision. All representations contained herein are correct and true to the best of my knowledge. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield and Dawson Consulting Engineers and am Registered as a Professional Engineer in the States of Washington and Alaska.

Signed this 24th day of October, 2001.



Stephen S. Lockwood, P.E.

Hatfield & Dawson Consulting Engineers



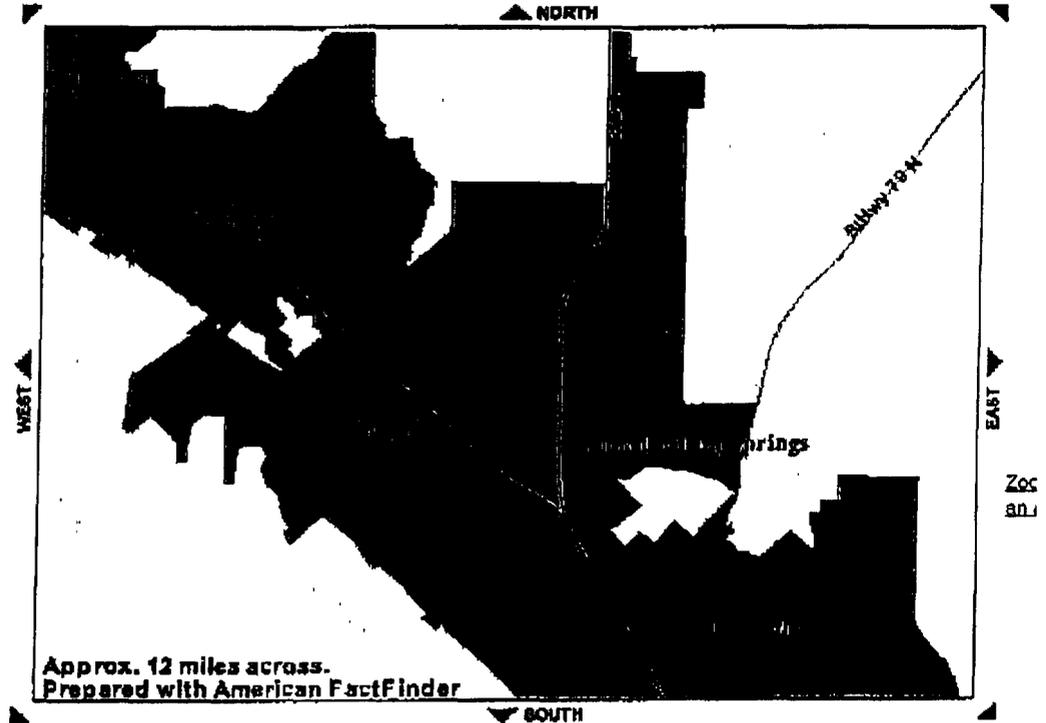
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recenter recenter and zoom in [Quick tips](#)

Legend

- Boundaries**
■ '00 Place
~ '00 Place
Features
~ Major road
~ Street



• Zoom on an address [Quick tips](#)

Street Address

City State Zip Code

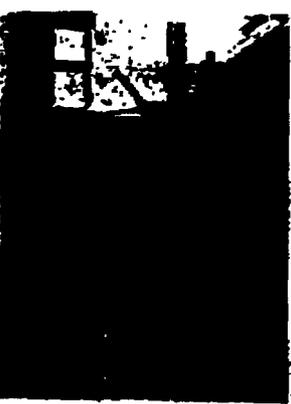
MURRIETA FACTS AND FIGURES



MAJOR EMPLOYERS COMPANY	EMPLOYEES
Smith Printing	45
Lib-Tek	30
Deale Material	24
Cryslip	206
Bus By	10
Tyger	115
American Industrial Manufacturing Services	117
City of Murrieta	140
House 2 Home	130
Out Grove Institute	110
Home Depot	200
Wal-Mart	240
Southwest Hardware System	200
Murrieta Valley Unified School District	100

Year of Incorporation 1991
Square Miles 37.42
With Square of Inhabitation 42
Population per square mile 1708
Single family homes (2000) 11,992
Median household size (people) 3.14
Population 2001 46,840
Population 1990 30,253
Population 1980 2,330
Population 1970 542
Population 1960 880
Building home sales (1999) 1,098
Building home sales change (1998-1999) 128.6%
Existing Home Median Price Jan Qtr 2000 \$173,219
Existing Home Price Change 1999-2000 4.3%
New Home Median Price Jan Qtr 2000 \$217,719
New Home Price Change 1999-2000 8.9%
Rental Trible sales 1998 4895
Rental Trible sales Growth 1998-1999 415.4%
Rental Trible sales per Capita 1999 \$7,993
Tax sales 75%

MURRIETA CLIMATE
 Murrieta is located approximately 30 miles from the Pacific Ocean. The Pacific Valley is cooled in the summer by afternoon breezes and protected in the winter from the harshest of northern snow and ice. The climate is influenced by marine air, which flows through a gap in the mountains. The mean maximum temperature in August is 87 degrees, and in January is 61 degrees. Due to cold air draining into the valley, heavy-fogging areas occasionally experience some freezing temperatures. Due to the predominance of sea breezes throughout the area, seasonal levels are relatively low. Strong currents result in the late summer and virtually never in the winter months.



BLAND EXPANS SMALL BUSINESS DEVELOPMENT CENTER
 The Bland Empire Small Business Development Center, a division of the Bland Empire Economic Partnership, is a non-profit organization funded by the USSEA and California Technology Trade and Commerce Agency. The BADC offers free business consulting, seminars, workshops and information resources to new and existing businesses in the Bland Empire. For more information contact the Bland Empire Small Business Development Center at 909-781-3344.

TEMPERATURE PERIOD	MIN	MEAN	MAX	INCHES
January	46.0	61.0	69.9	1.36
April	51.7	62.0	72.2	0.75
July	61.5	73.4	82.4	0.85
October	52.4	64.7	76.2	0.46
Year	57.2	64.7	73.4	10.44

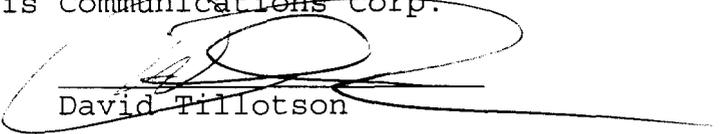
SEE MURRIETA CHAMBER OF COMMERCE (31)

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing REPLY COMMENTS have been sent via first class United States mail, postage pre-paid, this 5th day of November, 2001, to:

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