

2001 DEC -3 AM 18

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

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|---------------------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. <u>00-129</u> / |
| Table of Allotments, |) | RM-9909 |
| FM Broadcast Stations. |) | RM-10017 |
| (Moberly, Malta Bend, Chillicothe, |) | |
| Lee's Summit, La Monte, Warsaw, |) | |
| Nevada, Maryville & Madison, Missouri |) | |
| & Topeka, Junction City, Humboldt, |) | |
| Marysville & Burlington, Kansas, |) | |
| & Auburn, Nebraska) ¹ |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 21, 2001

Released: November 30, 2001

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Best Broadcasting, Inc. ("Best"), the Commission has before it for consideration the Notice of Proposed Rule Making, 15 FCC Rcd 12708 (2001), requesting the substitution of Channel 247C2 for Channel 247C3 at Moberly, Missouri, and modification of the license for Station KCSX accordingly. To accommodate the substitution at Moberly, Best also requested the substitution of Channel 280C3 for Channel 248C3 at Malta Bend, Missouri, Station KRLI, and the substitution of Channel 273A for Channel 280C3 at Chillicothe, Missouri, Station KCHI.² Best and First Broadcasting Company, L.P. ("Joint Parties") filed a counterproposal and supplemental comments.³ First Broadcasting Company, L.P. is the holder of an option to purchase Station KCSX. Missouri Valley Broadcasting, Inc. ("MVB") filed reply comments.⁴

¹ The communities of Topeka, Junction City, Humboldt, Marysville, & Burlington, Kansas, Auburn, Nebraska, La Monte, Warsaw, Nevada, Maryville, Lee's Summit & Madison, Missouri, have been added to the caption.

² Since Best had reached an agreement with Stations KRLI, Malta Bend and KCHI, Chillicothe, with regard to reimbursement and support of its proposal, it was not necessary to issue an Order to Show Cause to the stations.

³ Public notice of the counterproposal was given on December 7, 2000, Report No. 2455 (RM-10017).

⁴ MVB, licensee of Station KMMO-FM, Channel 275C1, Marshall, Missouri, filed an application to move KMMO-FM's transmitter site 18 kilometers. The application was in conflict with the use of Channel 273A at Chillicothe as proposed in the Notice. Since an alternate channel has been proposed for allotment at Chillicothe which does not

2. Joint Parties counterproposed the substitution of Channel 247C1 for Channel 247C3 at Moberly, Missouri and reallocation of Station KCSX from Moberly to Lee's Summit, Missouri, as a first local service. The counterproposal has been filed pursuant to 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, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Joint Parties state that the proposed site for Channel 247C1, Lee's Summit, is mutually exclusive with its current use at Moberly. According to Joint Petitioners, Lee's Summit with a population of 46,418 people is the largest community in the state without local radio service and that the reallocation provides a preferable arrangement of allotments because Moberly with a population of 12,839 people will continue to receive service from Stations KWIX(AM), KRES(FM), KZZT(FM) and noncommercial educational FM Station KBKC. Joint Parties acknowledge that Lee's Summit is located within the Kansas City, Missouri/Kansas Urbanized Area and provide a showing pursuant to the criteria set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), that the community is independent of the Urbanized Area.⁵ The Joint Parties contend that their counterproposal offers significant public interest benefits as a first local service will be allotted to Lee's Summit and, as discussed below, to the

conflict with MVB's application, we have not addressed the reply comments.

⁵ The Commission considers eight factors when determining whether a particular community qualifies as independent. 1) Lee's Summit has a thriving business community that provides ample employment opportunities for residents of the community with 29% of the residents over the age of sixteen working in the community. 2) Lee's Summit has its own newspaper, the Lee's Summit Journal which began publishing in 1881 and now publishes three editions per week. The city also operates a web site, www.lees-summit.mo.us and publishes City Scope, a quarterly newsletter which provides updates on local government issues. 3) Lee's Summit residents consider their community to be separate from the Urbanized Area with its own well-established identity. The community was established in 1865 and incorporated in 1867. 4) Lee's Summit has its own government which consists of a mayor, eight city council members and a city manager. The city also has a Board of Adjustments, Community Development Committee, Human Relations Commission, Public Safety Advisory Board and a Tax Increment Financing Commission. The community assesses taxes on real estate and personal property. 5) Lee's Summit has six zip codes associated exclusively with the community (64063, 64064, 64065, 64081, 64092 and 64086.) 6) Lee's Summit has numerous commercial establishments, some of which use "Lee's Summit" in their names: Lee's Summit Animal Clinic, Lee's Summit Bank, Lee's Summit Cleaners and Lee's Summit Storage, to name a few. Lee's Summit has its own municipal airport. Lee's Summit has its own health facilities, Lee's Summit Hospital, which provides emergency services, intensive care and cardiac care units, pediatric and plastic surgery, as well as a variety of outpatient services. The community also has a variety of doctors and dentists. 7) Businesses can advertise directly to Lee's Summit residents through the Lee's Summit Journal newspaper, as well as various commercial web sites, local cable TV system and the Lee's Summit Chamber of Commerce. 8) Lee's Summit provides its own police and fire services, maintains its own parks, recreation areas, day camp and swimming pools, and street repairs. Other subdivisions of the municipal government provide services like solid-waste recycling, animal control and building inspection. In addition, Lee's Summit has its own school district and public library. As to relative size and proximity, Lee's Summit has a population that is 10.7% of that of Kansas City and is located approximately 27 kilometers from Kansas City's center city coordinates.

community of Madison, Missouri. Joint Parties point out that the counterproposal will provide an overall net gain in population to 1,844,091 people in an area of 13,088 square kilometers.

3. Based on the above, as the reallocation request of the Joint Parties is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will substitute Channel 247C1 for Channel 247C3 at Moberly, Missouri, and reallocate Channel 247C1 from Moberly to Lee's Summit, Missouri, and modify the authorization for Station KCSX, as requested. The reallocation will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), as it will provide a first local aural transmission service to the larger community of Lee's Summit.⁶ We believe that Joint Parties have made a sufficient showing that Lee's Summit is independent of the Kansas City, Missouri/Kansas Urbanized Area. Channel 247C1 can be allotted to Lee's Summit, Missouri, in compliance with the minimum distance separation requirements set forth in Section 73.207(b)(1) of the Commission's Rules at the requested site provided additional substitutions are made. The coordinates for Channel 247C1 at Lee's Summit are **39-04-20** and **94-35-45**.

4. To accommodate the allotment at Lee's Summit, the following substitutions will be made. All of the respective licensees or permittees have consented to the substitutions and the Joint Parties have reached an agreement with respect to reimbursement with each of the stations required to make changes to accommodate the allotment at Lee's Summit. We shall substitute Channel 233C for Channel 247C at Topeka, Kansas, and modify the license for Station WIBW-FM accordingly. A staff engineering analysis confirms that Channel 233C can be allotted to Topeka in compliance with the spacing requirements at its current site. The coordinates for Channel 233C at Topeka are **39-00-19** and **96-02-58**. To accommodate the substitution at Topeka, we shall also make changes at Junction City and Humboldt, Kansas, and Auburn, Nebraska. At Junction City, Kansas, we shall substitute Channel 248C1 for Channel 233C1 at its current transmitter site and modify the license for Station KJCK-FM accordingly. A staff engineering analysis confirms that Channel 248C1 can be allotted to Junction City at its current site. The coordinates for Channel 248C1 at Junction City are **39-00-53** and **96-52-15**. Channel 237C3 can be substituted for Channel 232C3 at Humboldt, Kansas, with the authorization for Station KINZ modified to specify Channel 237C3 at a new transmitter site to which the licensee, Sutcliffe Communications, Inc., has consented. The coordinates for Channel 237C3 at Humboldt are **37-43-21** and **95-33-41**. To accommodate the substitution at Humboldt, we shall substitute Channel 249A for Channel 237A at Burlington, Kansas and modify the license for Station KSNP(FM) accordingly. Channel 249A can be allotted to Burlington in compliance with the spacing requirements at its current site. The coordinates for Channel 249A at Burlington are **38-10-08** and **95-39-07**. In order to substitute channels at Topeka, Kansas, Channel 276C3 will be substituted for Channel 234C3 at Auburn, Nebraska, with the license for Station KNCY(FM) modified to show operation on Channel 276C3.⁷ Channel

⁶ The allotment priorities are: (1) first full-time aural service; second full-time service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

276C3 can be allotted to Auburn in compliance with the spacing requirements at its current transmitter site provided a substitution is made at Marysville, Kansas. The coordinates for Channel 276C3 at Auburn, Nebraska, are **40-27-57** and **95-45-38**. Channel 238C3 can be substituted for Channel 276C3 at Marysville, Kansas, at a new transmitter site for Station KNDY-FM. The coordinates for Channel 238C3 at Marysville are **39-56-06** and **96-47-33**. The licensee of Station KNDY-FM, Dierking Communications, Inc., has consented to the site change. To further accommodate the allotment at Lee's Summit, we shall substitute Channel 280C3 for Channel 248C3 at Malta Bend, Missouri, and modify the license for Station KRLI accordingly, as was proposed in the Notice. The channel can be allotted to Malta Bend at Station KRLI's current transmitter site. The coordinates for Channel 280C3 at Malta Bend are **39-21-59** and **93-24-12**. In order to make changes at Malta Bend, it is necessary to change the channel and transmitter site for Station KCHI, Chillicothe, Missouri. Joint Parties have requested the substitution of Channel 253A for Channel 280C3 at Chillicothe which can be accomplished at a new site in compliance with the Commission's spacing requirements. Channel 253A can be allotted to Chillicothe at coordinates **39-43-40** and **93-35-43**.⁸ The licensee for Station KRLI has consented to the channel and site change. To further accommodate the allotment at Lee's Summit, we shall substitute Channel 249C2 for Channel 246C3 at La Monte, Missouri, and modify the license for Station KPOW accordingly. Channel 249C2 can be allotted to La Monte in compliance with the Commission's spacing requirements provided additional changes are made. The coordinates for Channel 249C2 at La Monte are **38-48-23** and **93-09-08**. The licensee, Sedalia Investment Group, LLC, has consented to a site change for Station KPOW. In order to substitute channels at La Monte, we shall also substitute Channel 246A for Channel 249A at Warsaw, Missouri, at a new transmitter site and modify the license for Station KAYQ accordingly. The coordinates for Channel 246A at Warsaw are **38-20-41** and **93-23-10**. The licensee, Valkyrie Broadcasting Company, Inc., has consented to the transmitter site change. To allot Channel 246A at La Monte, we shall substitute Channel 248A for Channel 249A at a new transmitter site at Nevada, Missouri. The coordinates for Channel 248A at Nevada are **37-52-06** and **94-20-01**. The license for Station KNMO will be modified to specify operation on Channel 248A at Nevada in compliance with the Commission's spacing requirements. Harbit Communications, Inc., licensee for Station KNMO, has consented to the channel and site change. As requested, to accommodate the new channel at Lee's Summit, we shall change the transmitter site for Station KNIM, Channel 246C3, Maryville, Missouri. The coordinates for Channel 246C3 at Maryville are **40-21-06** and **94-52-17**. Nodaway Broadcasting Corporation, licensee for Station KNIM, has consented to the change in transmitter site reference coordinates.

⁷ The authorization for Station KNCY-FM was amended to specify operation on Channel 234C3 in lieu of Channel 288A in a one-step application (BPH-19990816IE). We will take this opportunity to correct the FM Table of Allotments.

⁸ The original petition proposed the substitution of Channel 273A for Channel 280C3 at Chillicothe. However, on August 11, 2000, Station KMMO, Marshall, Missouri, filed an application to relocate its transmitter site which conflicted with the proposed allotment of Channel 273A at Chillicothe. In order to avoid a conflict with the application, Joint Parties proposed the allotment of Channel 253A at Chillicothe at a new site.

5. In response to the request for an FM allotment at Madison, Missouri, by Joint Parties, we shall allot Channel 247C3 to the community as a first local service. This proposal was in conflict with the originally proposed Channel 247C2 allotment at Moberly and also required the reallocation of Station KCSX from Moberly to Lee's Summit. Best Broadcasting, Inc. stated its intention to file an application for Channel 247C3 at Madison. In support of this allotment, the Joint Parties stated that Madison is an incorporated community with a population of 518 people. Further, Madison has its own local government, fire department and school district. The community has its own zip code (65263), public library, and numerous churches. A staff engineering analysis confirms that Channel 247C3 can be allotted to Madison, Missouri, in compliance with the Commission's spacing requirements. The coordinates for Channel 247C3 at Madison are **39-24-37** and **92-10-58**.

6. 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 January 14, 2002, 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 |
|------------------------|------------------------------|
| Moberly, Missouri | 284C, 288C2 |
| Lee's Summit, Missouri | 247C1 |
| Topeka, Kansas | 233C, 257A, 262C, 295C, 299C |
| Junction City, Kansas | 248C1 |
| Humboldt, Kansas | 237C3 |
| Burlington, Kansas | 249A |
| Auburn, Nebraska | 276C3 |
| Marysville, Kansas | 238C3 |
| Malta Bend, Missouri | 280C3 |
| Chillicothe, Missouri | 253A |
| La Monte, Missouri | 249C2 |
| Warsaw, Missouri | 246A, 253A |
| Nevada, Missouri | 248A |
| Madison, Missouri | 247C3 |

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

Steven C. Mickelson
Station KNIM-FM
Nodaway Broadcasting Corp.
Box 278
Maryville, MO 64468

Michael S. Harbit
Station KNMO-FM
Harbit Communications, inc.
P. O. Box 447
Nevada, MO 64772

Station WIBW-FM
Morris Communications Corp.
725 Broad Street
P. O. Box 936
Augusta, GA 30903

Station KAYQ-FM
Valkyrie Broadcasting, Inc
Box 1420
Warsaw, MO 65355

Michael D. Sutcliffe
Station KINZ(FM)
Sutcliffe Communications, LLC
117 South Grant Street
Chanute, KS 66720

Station KNCY-FM
Radio 2000 NE, Inc.
11863 West 112th Street
Overland Park, KS 66210

Station KSNP(FM)
Southeast Kansas Broadcasting Co., Inc.
250 N. Water, Suite 300
Wichita, KS 67202

Station KPOW-FM
Sedalia Investment Group, LLC
301 S. Ohio
Sedalia, MO 65301-4436

Station KCHI-FM
c/o Daniel D. Leatherman
1112 Hillside
Chillicothe, MO 64601

Station KNDY(FM)
Dierking Communications, Inc.
1212 11th Road/RR3, Box 1C
Marysville, KS 66508

Michael Carter
Station KRLI(FM)
KANZA, Inc.
102 North Mason
Carrollton, MO 64633

Daryl W. Gatza
Station KJCK-FM
Platinum Broadcasting, Inc.
Box 789, W. Ash & Highway 77
Junction City, KS 66441

Matthew H. McCormick
Reddy, Begley & McCormick
2175 K Street, NW, Suite 350
Washington, DC 20037-1830
(Counsel for Station KMMO)

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Best Broadcasting, Inc. for Station KCSX, Channel 247C3, Moberly, Missouri, IS MODIFIED to specify operation on Channel 247C1 at Lee's Summit, Missouri, 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.

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Sutcliffe Communications, LLC, for Station KINZ(FM), Channel 232C3, Humboldt, Kansas, IS MODIFIED to specify operation on Channel 237C3; that the authorization of Dierking Communications, Inc. for Station

KNDY(FM), Channel 276C3, Marysville, Kansas, IS MODIFIED to specify operation on Channel 238C3; that the authorization of Daniel D. Leatherman for Station KCHI-FM, Channel 280C3, Chillicothe, Missouri IS MODIFIED to specify operation on Channel 253A; that the authorization of Sedalia Investment Group, LLC for Station KPOW-FM, Channel 246C3, La Monte, Missouri, IS MODIFIED TO specify operation on Channel 249C2; that the authorization of Valkyrie Broadcasting for Station KAYQ(FM), Warsaw Missouri, Channel 249A, IS MODIFIED TO specify operation on Channel 246A; that the authorization of Harbit Communications, Inc. for Station KNMO-FM, Nevada, Missouri, Channel 249A, IS MODIFIED to specify operation on Channel 248A; that the authorization for Station KNIM-FM, Maryville, Missouri, Channel 246C3, IS MODIFIED to specify operation on Channel 246C3 at a new site, 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.

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Morris Communications Corporation for Station WIBW-FM, Topeka, Kansas, IS MODIFIED to specify operation on Channel 233C; that the authorization of Platinum Broadcasting, Inc. for Station KJCK-FM, Junction City, Kansas, IS MODIFIED to specify operation on Channel 248C1; that the authorization of Southeast Kansas Broadcasting Co., Inc. for Station KSNP(FM), Burlington, Kansas, IS MODIFIED to specify operation on Channel 249A; that the authorization of Radio 2000 NE, Inc. for Station KNCY-FM, Auburn, Nebraska, IS MODIFIED to specify operation on Channel 276C3; and that the authorization of KANZA, Inc. for Station KRLI(FM), Malta Bend, Missouri, IS MODIFIED to specify operation on Channel 280C3 subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in License BLH-19901015KF except for the channel as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit.

(FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-19901015KF, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), 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, Best Broadcasting, Inc., licensee of Station KCSX(FM) and First Broadcasting Company, L.P., holder of an option to purchase Station KCSX(FM) are required to submit a rule making fee in addition to the fee required for the application to effect the substitution of channels and change in community of license for Station KCSX(FM) from Moberly, Missouri to Lee's Summit, Missouri.

12. A filing window for Channel 247C3 at Madison, Missouri, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

13. Accordingly, IT IS ORDERED, That the petition filed by Best Broadcasting, Inc. (RM-9909) IS DISMISSED.

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

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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