



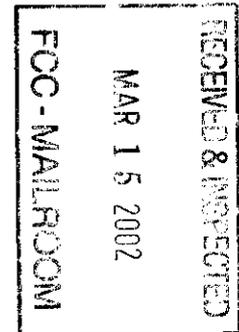
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Federal Communications Commission
Washington, D.C. 20554

Cl Keitel
Tina J. Carter

March 14, 2002

Robert L. Olender, Esq.
Koerner & Olender, P.C.
5809 Nicholson Lane, Suite 124
North Bethesda, Maryland 20852-5706



Dear Mr. Olender:

This is in response to a petition for rule making you filed on behalf of Smoke and Mirrors, L.L.C., ("Petitioner"), licensee of Station KRRK(FM), Channel 266C0, Lake Havasu City, Arizona.

Petitioner seeks to reallocate Channel 266C0 from Lake Havasu City to Yucca, Arizona, pursuant to Section 1.420(i) of the Commission's Rules.¹ Petitioner states that there will be no change in the Station KRRK transmitter site as a result of the proposed reallocation. Our engineering study of Petitioner's reallocation proposal discloses that, operating on Channel 266C0, Petitioner's proposal for Yucca operating from Station KRRK's existing site would be short-spaced by 11.6 kilometers to Station KAZL, Channel 266C1, in Payson, Arizona. To avoid such a short-spacing, Station KRRK's recent upgrade to Channel 266C0 was granted pursuant to Section 73.215 of the Commission's Rules, which allows a station's application to be granted if it provides equivalent contour protection to other stations with which it is actually short-spaced. In this regard, the Commission does not ordinarily grant a rulemaking request for a change of community of license to a licensee that is operating pursuant to a grant made pursuant to Section 73.215 of the Rules. See Albemarle and Indian Trail, North Carolina ("Albemarle"), 16 FCC Rcd 13876 (2001) at paragraph 7.

Traditionally, the Commission's policy is to grant no waivers of the spacing requirements in considering the allotment of an FM Channel. The Commission has created a limited exception to that policy to allow a station that complied with relevant Commission spacing rules at the time it received the grant of its construction permit, but became technically "short-spaced" under new rules created after the station had been authorized, such as "grandfathered" pre-1964 facilities under Section 73.213 of the Rules, to change its community of license without changing its transmitter or technical facilities. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992) and cases cited in paragraphs 3 and 4 of Albemarle. Killeen and Cedar Park, Texas ("Killeen"), 15 FCC Rcd 1945 (2000), is a further exception to the usual policy, but it is limited to a situation in which (1) a station that wants to change its community of license is short-spaced to a pre-1964 grandfathered station and/or other stations that had been granted pursuant to

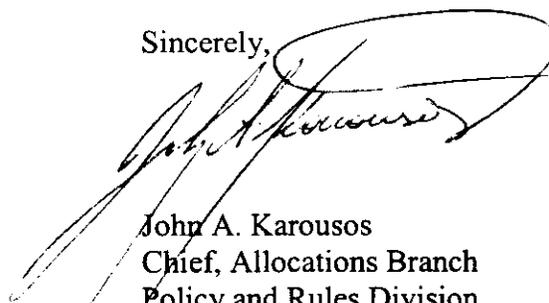
¹ We note that Petitioner initially filed a request to reallocate Channel 266C1 from Lake Havasu City to Yucca, Arizona, but that Petitioner's application to upgrade that Station from Channel 266C1 to Channel 266C0 was granted on January 15, 2002.

Section 73.215 of the Commission's Rules; (2) the station in question does not propose to change its transmitter site or technical facilities and does not propose to utilize contour protection for any station; and (3) the proposed change in community of license creates no new short-spacing and no existing short-spacing would be exacerbated.

Unlike the situation in Killeen, Petitioner received its current authorization pursuant to a Section 73.215 contour protection grant. The Commission has stated its reluctance to grant a waiver of the short-spacing rules at the allotment stage when the station requesting the waiver has received its current grant pursuant to a voluntary use of Section 73.215. See Albemarle at paragraph 7. Thus, unlike pre-1964 grandfathered, short-spaced stations, short-spacings allowed pursuant to Section 73.215 of the Rules are treated differently when they are the result of a voluntary decision by stations to move to short-spaced sites and provide contour protection rather than to utilize a fully-spaced site. Although such short-spacings are permitted at the application stage, they are not allowed at the allotment stage unless the licensee who wishes to obtain a waiver of the short-spacing rules can demonstrate compelling public interest benefits that derive from its proposal. See Albemarle at paragraph 6. Petitioner has not presented any such compelling public interest benefits in its petition for rule making.

In light of the foregoing, Smoke and Mirrors, L.L.C.'s petition for rule making is being returned as unacceptable for filing.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Karousos", written over a large, light-colored oval shape.

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