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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-345
Table of Allotments,	)	RM-10344
FM Broadcast Stations.	)	
(Wickenburg and Salome, Arizona)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 10, 2002 Released: April 19, 2002

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is the Notice of Proposed Rule Making ("Notice"), 67 FR 851, published January 8, 2002, issued in response to a petition filed on behalf of Circle S Broadcasting Co., Inc. ("Circle S"), licensee of Station KSWG(FM), Wickenburg, Arizona, proposing the substitution of Channel 242C for Channel 242C3 at Wickenburg,[1] and modification of its authorization accordingly. Additionally, the Notice proposed the substitution of Channel 270A for vacant Channel 241A at Salome, Arizona,[2] to accommodate the Circle S proposal, as requested.[3] Circle S and Wickenburg Associates, LLC ("WAL"), proposed optionee for Station KSWG(FM), filed joint comments and a counterproposal, followed by their request to dismiss the counterproposal and reinstate the original Wickenburg proposal.[4] Kevin M. Fitzgerald

[1]The license for Station KSWG(FM) was modified from Channel 231C3 to Channel 242C3 effective October 9, 2001. See 16 FCC Rcd 15793 (2001).

[2] Channel 241A at Salome was listed among other vacant nonreserved band FM allotments, in Broadcast Auction No. 37, previously scheduled to commence on December 5, 2001. However, on July 3, 2001, the United States Court of Appeals for the District of Columbia Circuit in *National Public Radio, Inc., et al. v. FCC, Nos. 00-1246, 00-1255* (decided July 3, 2001) ("NPR") vacated the portion of the Commission's Noncommercial Report and Order, 65 FR 36375 (June 8, 2000), that required noncommercial educational ("NCE") entities that applied for authorizations in the non-reserved spectrum to participate in auctions with mutually exclusive commercial applicants. As the vacant nonreserved FM band allotments included in Auction No. 37 are potentially impacted by *NPR*, the Commission postponed Auction No. 37 pending its response to the *NPR* decision. See Public Notice DA 01-2148, released September 14, 2001, 66 FR 48467, September 20, 2001.

[3] Wickenburg and Salome are located 59.7 kilometers (37 miles) whereas a distance of 165 kilometers (103 miles) is required in this instance.

[4] Circle S and WAL's joint counterproposal involves the additional community of Surprise, Arizona. On March 5, 2002, Circle S and WAL withdrew their counterproposal in favor of retaining the original modification request at Wickenburg. Therefore, the counterproposal was not placed on public notice. Additionally, Circle S provided a declaration by Harold Shumway, a principal of Circle S, stating that he, nor any other principals of Circle S, have (continued)

("Fitzgerald") filed late comments, accompanied by a motion to accept.[5] No additional comments were received.

2. Fitzgerald advises that he expressed his previous interest in applying for Channel 241A at Salome, Arizona, during the comment period for Auction No. 37, and intends to bid thereon once the auction process resumes. While not objecting to a Class A channel substitution for Channel 241A at Salome to accommodate the Wickenburg modification proposal, Fitzgerald requests, however, an alternate channel in lieu of Channel 270A, as proposed in the Notice. In support, Fitzgerald advises that the proposed substitution of Channel 270A for Channel 241A at Salome would result in a smaller area in which he could locate his preferred transmitter site. In this regard, Fitzgerald remarks that operation on Channel 270A from his preferred sites for Channel 241A would result in short spacing to a Class C allotment in Sonoyta, Sonora, Mexico, thereby invoking Mexico-U.S. treaty issues. Therefore, Fitzgerald seeks the substitution of alternate Channel 224A as a substitute for Channel 241A at Salome, at a restricted site located 8.9 kilometers southeast of the community at coordinates 33-42-19 NL and 113-34-58 WL. Fitzgerald asserts that the replacement of Channel 224A for existing Channel 241A would provide him with more favorable southern site locations. Moreover, Fitzgerald claims that a southerly site location would enable a station operating on Channel 224A to provide city-grade coverage to Salome, as well as 1 mv/m service to approximately 60 kilometers (37.2 miles) of Interstate 10.[6] Fitzgerald alleges that without coverage of Interstate 10, it would be economically infeasible to operate a station at Salome.

3. Initially, we will address Fitzgerald's proposal to substitute Channel 224A for Channel 241A at Salome instead of Channel 270A, as proposed in the Notice. It is the Commission's policy to consider whichever allotment plan it believes to be more conducive to serving the public interest. It is not required to allot the preferred numerical channel of any specific party. See the Appendix to the Notice. Moreover, the Commission endeavors to allot channels at the least theoretical site restriction necessary where an allotment will be open to applications. See Bordelonville, Louisiana, 16 FCC Rcd 13297 (2001), and cases cited therein. See also, Rangely, Silverton and Ridgway, Colorado, 15 FCC Rcd 18266 (2000), recon. denied, 6 FCC Rcd 143 (1991); and Vacaville, California, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). In this instance, Fitzgerald alleges that the location required for Channel 270A at Salome would not afford the maximum coverage he seeks to provide along Interstate 10. However,

received or will receive any financial consideration in exchange for the withdrawal of the Surprise counterproposal. As Circle S has complied with the requirements of Section 1.420(j) of the Commission's Rules, we will consider only the Wickenburg modification proposal.

[5] The Commission does not generally contemplate the filing of comments beyond the deadline specified in a proceeding. See Section 1.415 of the Commission's Rules. However, in this instance, we have accepted Fitzgerald's comments since they will not affect the outcome of this proceeding.

[6] Fitzgerald advises that Interstate 10 is the main corridor between Phoenix, Arizona and southern California.

Fitzgerald's proposal for Channel 224A at Salome would require placement of the transmitter therefor 8.9 kilometers southeast of the community at coordinates 33-42-19 NL and 113-34-58 WL. Conversely, Channel 270A can be utilized at Salome at the current reference site for vacant Channel 241A (i.e, site located 0.1 kilometer north of the community at coordinates 33-46-54 NL and 113-36-42 WL). While we recognize that no two channels are exactly the same, the Commission considers channels to be equivalent provided they are of the same class distinction, would comply with the minimum spacing criteria, and would enable a broadcast facility to comply with the requirements of Section 73.315 of the Commission's Rules to provide 70 dBu coverage over the proposed allotment community. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).[7]

4. As to Fitzgerald's argument concerning the need to cover Interstate 10 to ensure the economic feasibility of a station to operate at Salome, the Commission has previously determined that economic issues are not relevant in the allotment or licensing context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); see also, Potts Camp and Saltillo, Mississippi, 13 FCC Rcd 11909 (1998), rev. denied, 66 FR 56038, November 6, 2001; Albion, Nebraska, 10 FCC Rcd 33183 (1995), rev. denied, 10 FCC Rcd 11927 (1995); and Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993). Moreover, it is the licensee's primary obligation to serve the needs and interests of the community to which it is licensed.[8] Therefore, based upon the foregoing, we will not substitute Channel 224A for Channel 241A at Salome, as requested by Fitzgerald.

5. In light of the withdrawal of the joint counterproposal filed by Circle S and WAL, we consider the merits of the Circle S modification proposal. In light of the information presented in this proceeding, we believe the public interest would be served by substituting Channel 242C for Channel 242C3 at Wickenburg and modifying the license for Station KSWG(FM), as requested. As stated in the Notice, the modification will enable Station KSWG(FM) to increase its service area, creating a gain of service to 78,588 people in an area of 11,618 square kilometers. Additionally, to accommodate the modification for Station KSWG(FM) at Wickenburg. we will substitute Channel 270A for vacant Channel 241A at Salome, Arizona,

6. Channel 242C can be allotted to Wickenburg in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, at the requested site of Circle S, located 24.6 kilometers (15.3 miles) west of the community at coordinates 33-54-15 NL

[7] We also indicated in Vero Beach that we would consider other pertinent factors which might preclude a finding of channel equivalency, such as aeronautical hazards or environmental effects which would prevent a station from constructing on a particular channel. However, no showings or testimony from local zoning officials or environmental groups was presented herein to substantiate that a station could not be constructed on Channel 270A within the specified area at Salome.

[8] See Section 73.1120 of the Commissions' Rules.

and 112-59-02 WL. Additionally, Channel 270A can be substituted for Channel 241A at Salome, Arizona, at the current reference site for the vacant allotment, located 0.1 kilometer (0.04 mile) north of the community, at coordinates 33-46-54 NL and 113-36-42 WL.

7. As Wickenburg and Salome are each located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence in the specified allotments has been requested. However, final notification approval from the Mexican government has not been received. Rather than delay Circle S an opportunity to file its modification application, we now substitute Channel 242C for Channel 242C3 at Wickenburg. We also substitute Channel 270A for vacant Channel 241A at Salome. If a construction permit is granted on Channel 242C at Wickenburg or Channel 270A at Salome prior to the receipt of formal concurrence in the allotments by the Mexican government, the authorizations will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico."

8. 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 June 3, 2002, 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:

City	Channel No.
Salome, Arizona	270A
Wickenburg, Arizona	242C, 287C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Circle S Broadcasting, Inc. for Station KSWG(FM), IS MODIFIED to specify operation on Channel 242C in lieu of Channel 242C3 at Wickenburg, Arizona, 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. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change in community of license of a television or FM 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, Circle S Broadcasting Co., Inc., licensee of Station KSWG(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Wickenburg, Arizona.

11. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order by Certified Mail, Return Receipt Requested, to Circle S Broadcasting Co., Inc., 801 West Wickenburg Way, Wickenburg, Arizona 85390.

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

13. A filing window for Channel 270A at Salome, Arizona, 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.