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 FCC-MAILROOM

Federal Communications Commission

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 01-69
Table of Allotments,	)	RM-10081
FM Broadcast Stations.	)	
(Parker, Arizona)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: May 15, 2002**

**Released: May 24, 2002**

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by McMullen Valley Broadcasting Company ("Petitioner"), the Audio Division considers herein a Notice of Proposed Rule Making ("Notice"), 16 FCC Rcd 5587 (2001), proposing the allotment of Channel 247C3 to Parker, Arizona, as that community's fourth local aural transmission service. Petitioner filed comments and reply comments. Farmworker Educational Radio Network, Inc. ("FERN") filed "Comment and Counterproposal" ("counterproposal"), reply comments, and an opposition to a motion to strike its reply comments filed by Infinity Radio License, Inc. ("Infinity"),<sup>1</sup> licensee of Station WMXB(FM) (WMXB), Henderson, Nevada. Infinity filed a motion to strike FERN's reply comments and a reply to FERN's opposition to Infinity's motion to strike. Baker Broadcasting, L.L.C., permittee of Station KKBK(FM), Baker, California, filed reply comments. In its comments, Petitioner expresses its continuing interest in filing an application for authority to construct and operate an FM station in Parker, utilizing Channel 247C3, if that channel is allotted to Parker, Arizona. For the reasons stated below, we dismiss FERN's counterproposal as unacceptable for consideration and grant Petitioner's request to allot Channel 247C3 to Parker, Arizona.

2. In its counterproposal, FERN proposes to modify its construction permit for a new FM station on Channel 230C3 at Parker, Arizona, to specify Channel 248B1 because FERN wants its transmitter site to be in California rather than Nevada. To accommodate this channel change, FERN proposes the allotment of Channel 239C3, to Parker, rather than Channel 247C3 as proposed in the Notice. Further, to accommodate its channel change from 230C3 to 248B1, FERN requests a change in the community of license for Station KFLG-FM, Kingman, Arizona, to Searchlight, Nevada, and a downgrade of KFLG-FM's channel class from Channel 234C to Channel 234CO. In addition, FERN's counterproposal requires the substitution of Channel 230C for Channel 231C at Station KMXB(FM), Henderson, Nevada, the substitution of Channel 276B1 for Channel 235B1 at Station KKBK(FM), Baker California, and the substitution of Channel 232C1 for vacant Channel 233C1 at Caliente, Nevada. In order to prevent a short-spacing between the proposed use of

<sup>1</sup> FERN filed a motion for a two-week extension of time to file its opposition to Infinity's motion to strike. In the interest of compiling a complete record, we grant FERN's motion.

Channel 276B1 at Station KKBK(FM), Baker, California, and Channel 274C at Station KSTJ(FM) ("KSTJ"), Boulder City, Nevada, FERN proposes to place a site restriction on Station KSTJ. FERN states that it understands that Station KSTJ will submit an application proposing the relocation of its transmitter upon adoption of the channel allotment proposed. FERN also states that its counsel was "advised" that Stations KSTJ and KFLG-FM had consented to the proposed changes in their stations and that appropriate reimbursements would be made to parties incurring expenses to effectuate the changes FERN proposes. In its reply comments, FERN revises the reference coordinates for its proposed allotment of Channel 234CO to Searchlight, Nevada, from 35-56-30 NL and 115-03-01 WL to 35-27-55 NL and 114-55-08 WL.

3: We have reviewed all the pleadings filed in this proceeding and we have determined that there are two significant defects that render FERN's counterproposal unacceptable for consideration. It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420 (d) of the Commission's Rules, Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 (1988) and Springdale Arkansas et al., 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990). At the time that FERN filed its counterproposal, FERN did not provide the Commission with any statement from H & R Broadcasting, Inc. ("H&R"), the licensee of Station KFLG-FM, that H & R consented to change its community of license for Station KFLG-FM from Kingman, Arizona, to Searchlight, Nevada, change its transmitter site, downgrade its channel class from Channel 234C to 234CO, and to apply for Channel 234CO if that channel were ultimately allotted to Searchlight, Nevada.<sup>2</sup> Further, Station KSTJ did not submit any statement to the Commission that it would submit an application proposing the relocation of its transmitter if Channel 276B1 were substituted for Channel 235 B1 at Station KKBK(FM), Baker, California, in order to avoid a short-spacing between Stations KKBK(FM) and Station KSTJ.<sup>3</sup> In light of the fact that it is Commission policy not to force an existing station to change its transmitter site or its community of license, clear consent to such changes had to be provided at the deadline for filing counterproposals or FERN's counterproposal would not be technically correct or substantially complete. See Llano and Marble Falls, Texas, 12 FCC Rcd 6809, 6810 note 3 (1997) and Claremore, Oklahoma et al., 3 FCC Rcd 4037 (1988). Thus, failure to demonstrate such consent by Stations KSTJ and KFLG-FM renders FERN's counterproposal unacceptable for consideration.

<sup>2</sup> In its opposition to Infinity's motion to strike FERN's reply comments, FERN includes a declaration from the president of H & R which states that H & R did consent to change the community of license of Station KFLG-FM, downgrade its channel to Channel 234CO, and apply for that channel if the Commission approved its reallocation to Searchlight, Nevada. This declaration was filed after the comment date in this proceeding and is therefore untimely.

<sup>3</sup> Neither FERN nor Station KSTJ has provided any written statement to the Commission verifying that Station KSTJ would move its transmitter to avoid short-spacing to Station KKBK(FM) if the Commission substituted Channel 276C1 for Channel 235B1 for Station KKBK(FM).

4. There is also a second and independent reason for finding FERN's counterproposal to be technically incorrect and substantially incomplete. FERN's counterproposal, as filed on the date that comments and counterproposals were due, was unacceptable for consideration because it did not propose a transmitter site for Station KFLG-FM's proposed new community of license, namely, Searchlight, Nevada, from which a 70 dBu contour would encompass Searchlight, Nevada, as required by Section 73.315 of the Commission's Rules. Our engineering staff has determined that there is a major obstruction between that site and Searchlight that prevents the extension of the proposed 70 dBu contour over all of Searchlight, Nevada. Therefore, given this fundamental defect, even if all aspects of FERN's original counterproposal, except for the proposed transmitter site for Station KFLG-FM, were technically correct and substantially complete when filed, FERN's counterproposal would still be dismissed as unacceptable for consideration.

5. We believe that the public interest would be served by the allotment of Channel 247C3 at Parker, Arizona, since it will provide a fourth local aural transmission service to that community. Channel 247C3 can be allotted to Parker, Arizona, consistent with the requirements of Sections 73.207(b)(1) and 73.315(a) of the Commission's Rules at coordinates 34-03-11 NL and 114-17-18 WL. This allotment requires a site restriction of 10.8 kilometers (6.7 miles) south of Parker.

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 **July 8, 2002**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Parker, Arizona	230C3, 247C3, 257C2

7. A filing window for Channel 247C3, Parker, 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.

8. IT IS FURTHERED ORDERED That the "Comment and Counterproposal" filed by Farmworker Educational Radio Network, Inc. IS DISMISSED.

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

10. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 247C3 at Parker, Arizona, should be addressed to the Audio Division, Office of Broadcast License Policy, Media Bureau, (202) 418-2700.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau**