

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

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In the Matter of)
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Amendment of Section 73.202(b),)
Table of Allotments,) MB Docket No. 03-163
FM Broadcast Stations.) RM-10734
(Fortuna Foothills and Wellton, Arizona))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 1, 2003

Released: October 3, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice")¹ issued at the request of Dana J. Puopolo ("Petitioner"), proposing the allotment of Channel 240A to Fortuna Foothills, Arizona, as the community's first local aural transmission service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. Petitioner filed comments reiterating an intention to apply for Channel 240A, if allotted to Fortuna Foothills. There were no counterproposals or additional comments received in response to the above-listed docket.

2. In the *Notice*, Petitioner was requested to submit additional information to demonstrate that Fortuna Foothills is a community for allotment purposes. As stated in the *Notice*, Fortuna Foothills is a Census Designated Place ("CDP") located in Yuma County in Western Arizona that is incorporated with a 2000 U.S. Census population of 20,478 persons. The designation of an area as a CDP raises the presumption that an area is a community for allotment purposes. However that presumption is rebuttable.² In response, Petitioner stated that the presumption that Fortuna Foothills is a community for allotment purposes cannot be rebutted because the Commission has licensed Station KBFY-LP to Fortuna, AZ,³ which is low-power television ("LPTV") station that is a broadcast service.

3. Station KBFY-LP is a LPTV station licensed to Fortuna, Arizona, which has "secondary spectrum priority" to full-service stations. As a threshold matter, we do not consider secondary broadcast services such as LPTV stations licensed to a particular community as one of the factors when determining an area to be a community for allotment purposes. While LPTV stations are licensed to a geographic "community" for reference purposes, they do not have many of the service obligations that are characteristics of a full service station. For instance, LPTV licensees are not required to serve a particular community or to maintain specific formats.⁴ Moreover, the "fill-in" nature of this secondary service, coupled with the full service allotment scheme, creates a situation where traditional Section 307(b) issues

¹ See *Fortuna Foothills and Wellton, Arizona*, 18 FCC Rcd 14373 (MB 2003).

² See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

³ Petitioner asserted in its comments that the names Fortuna and Fortuna Foothills are interchangeably used.

⁴ See *Low Power Television Service*, 51 RR 2d 476 (1982)

relating to a "community of license" do not exist. Additionally, a staff engineering analysis has determined that the city reference coordinates are different for the areas of Fortuna and Fortuna Foothills.⁵ As such, Fortuna and Fortuna Foothills are not interchangeable. Therefore, we disagree with the Petitioner's statement that Fortuna and Fortuna Foothills is the same area used interchangeably.

4. Based upon the information submitted in this proceeding, as well as our independent research, we do not believe that Fortuna Foothills is a "community" for allotment purposes. Petitioner provided no information that Fortuna Foothills contains any political, social, economic, commercial, cultural or religious organizations and services that identify themselves with that locality. This is a critical deficiency because in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social, and commercial organizations and the community in question.⁶ Nor has Petitioner provided any testimony of local residents attesting to Fortuna Foothills' community status.⁷ The record in this proceeding is insufficient to find that Fortuna Foothills is a community for allotment purposes. Therefore, we will not allot Channel 240A to Fortuna Foothills, Arizona or substitute Channel 248A for vacant Channel 240A at Wellton, Arizona as requested by Petitioner.

5. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Dana J. Puopolo IS DISMISSED.

6. IT IS FURTHER ORDERED, That the aforementioned proceedings ARE TERMINATED.

7. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁵ The city reference coordinates for Fortuna, AZ are 32-41-26 NL and 114-27-8 WL, whereas the city reference coordinates for Fortuna Foothills, AZ are 32-39-28 NL and 114-24-40 WL. Thus, the two areas are at least 4.2 kilometers (2.8 miles) apart.

⁶ See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (M M. Bur 1991).

⁷ See *Semora, North Carolina*, 5 FCC Rcd 934 (1990).