

C/C 203



Federal Communications Commission  
Washington, D.C. 20554

March 18, 2004

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Harry C. Martin, Esq.  
Lee G. Petro, Esq.  
c/o Living Proof, Inc.  
Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209

Dear Mr. Martin:

This letter is in response to the Petition for Rule Making filed on behalf of Living Proof, Inc. requesting to reserve vacant Channel 239A at Lake Isabella, California for noncommercial educational ("NCE") use.

The Commission has revised the standards for reserving an FM channel for NCE use.<sup>1</sup> Under these revised standards, a reservation proponent must demonstrate that it is technically precluded from using a reserved channel and would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1mV/m (60dBu) contour of its proposed station. This revised reservation policy was later extended to existing vacant FM allotments for which an allocation proceeding was initiated prior to the effective date of these standards.<sup>2</sup> To implement the revised reservation policy, the Media Bureau opened a filing window to permit interested parties to file a petition for rulemaking in compliance with the revised reservation policy and with the submission of a complete technical preclusion showing.<sup>3</sup>

A staff engineering analysis reveals that your petition is unacceptable for consideration. Specifically, reserving the allotment for NCE use would not provide a first or second NCE radio service to at least 10 percent of the population within the proposed service area. Therefore, we find that the reservation of vacant Channel 239A at Lake Isabella for NCE use is unwarranted.

In view of the above, we are returning your petition for rule making.

Sincerely,

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosure

<sup>1</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicant*, 15 FCC Rcd 7386 (2000), *recon granted in part* 16 FCC Rcd 5074 (2001).

<sup>2</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicant*, 18 FCC Rcd 6691 (2003).

<sup>3</sup> See *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003) ("Public Notice").