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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-82
Table of Allotments,	)	RM-10877
FM Broadcast Stations.	)	
(Pima, Arizona)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 23, 2005 **Released: June 27, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*[1] issued at the request of Calvary Chapel of Tucson ("Petitioner") proposing the reservation of vacant Channel 296A at Pima, Arizona for noncommercial educational ("NCE") use. Petitioner and Starboard Media Foundations, Inc., ("Starboard Media") filed comments. R.A. Montierth ("Montierth") and Desert West Air Ranchers Corporation ("Desert West") filed opposing comments.

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (*"NCE Report and Order"*), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.[2] Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, such population must exceed 2,000 persons. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. Thereafter, the Commission extended the expanded criteria to existing vacant FM allotments for which a *Notice of Proposed Rule Making* had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.[3] In a *Public Notice* released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.[4]

3. As stated in the *Notice*, the Petitioner filed a proposal requesting the reservation of vacant Channel 296A at Pima, Arizona for NCE use at reference coordinates 32-53-36 NL and 109-49-42 WL. The *Notice* also provided an opportunity for an opposing party to file rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. Alternatively, a party may file comments demonstrating that the reservation

[1] *Pima, Arizona*, 19 FCC Rcd 5333 (MB 2004) (*"Notice"*).

[2] 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the non-reserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to Channel 6 TV station(s) and to foreign allotments.

[3] *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (*"NCE Second Report and Order"*), 18 FCC Rcd 6691 (2003).

[4] *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003) (*"Public Notice"*).

proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m (60 dBu) contour of the proposed station.

4. **Comment Summary.** Petitioner filed comments restating its interest in the NCE reservation of vacant Channel 296A at Pima, Arizona. Starboard Media filed comments supporting the proposal, stating that it would file an NCE application for vacant Channel 296A at Pima, if reserved for NCE use.

5. Montierth, the original petitioner who requested the allocation of Channel 296A at Pima, as its first local service, filed comments opposing the NCE reservation of vacant Channel 296A at Pima. Montierth submitted an engineering report demonstrating that the NCE reservation of vacant Channel 296A at Pima would not provide a first and/or second NCE service to ten percent of the population within the proposed station's contour because of the existence of two NCE AM stations. In this regard, NCE AM station KFLT, Tucson, AZ, licensed to Family Life Broadcasting System, Inc, and NCE AM station KUAZ, Tucson, AZ, licensed to University of Arizona, both provide NCE coverage to the proposed service area of Channel 296A at Pima. Additionally, Montierth asserts that a NCE station could hypothetically operate on Channel 215 as a Class C3 facility at Pima using maximum facilities. According to Montierth, the C3 facility would provide a first and/or second NCE service within the proposed contour, which would preclude a determination that the proposed reservation of Channel 296A would provide an NCE service to at least ten percent of the population. Moreover, Channel 215C3 would meet TV Channel 6 protection requirements. As such, vacant Channel 296A at Pima should not be reserved for NCE use.

6. Desert West filed comments opposing the NCE reservation of Channel 296A at Pima because the Petitioner's engineering study failed to consider the possibility that an NCE allotment could be made within the reserved band that would provide TV Channel 6 protection to Station KUAT-TV, Tucson, Arizona in compliance with Section 73.525(c) of the Commission's rules. As a result, vacant Channel 296A at Pima should not be reserved for NCE use because the reserved band channels may not be precluded by TV Channel 6.

7. **Discussion.** The *NCE Second Report and Order* set forth a methodology to use when evaluating FM allotment reservation requests. In this regard, a reservation showing must satisfy two distinct criteria. First, it must establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area, such population must exceed 2,000 persons. Secondly, a reservation request must include a technical preclusion showing.

8. We disagree with the Montierth contention that a NCE station could operate on Channel 215 as a C3 facility at Pima. Our engineering analysis has determined that Channel 215C3 is, in fact, precluded because it is located within the Grade B contour of Station KUAT-TV Channel 6, Tucson, Arizona. Channel 215C3 is also short-spaced to vacant Channel 215C at Safford, Arizona. We also disagree with Montierth's argument that NCE AM stations should be included in the NCE coverage analysis. The only NCE signals relevant for the NCE coverage analysis are NCE stations operating on channels reserved exclusively for NCE-FM use because it is relatively easy for NCE stations operating in the nonreserved band to convert to commercial operations.[5]

[5] *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* 17 FCC Rcd 13,132, 13133-34 (para 3) (2002) (declining to include non-reserved band NCE service in NCE fair distribution analysis because of the "potentially temporary" nature of such service).

9. In this instance, the reserved band channels for use at Pima are located inside the TV Channel 6 Grade B contour. Under FM allotment procedures, reserve band channels are precluded from usage if located inside the Grade B contour of a TV 6 station. Thus, we find that the use of other reserved band channels at this location is precluded. Therefore, we will reserve vacant Channel 296A at Pima for NCE use because the reservation would provide a first and/or second NCE service to at least ten percent of the population. The NCE reservation of vacant Channel 296A at Pima would provide a first and/or second NCE service to one hundred percent of the total population of 27,131 persons.

10. A staff engineering analysis determines that Channel *296A can be allotted at Pima in compliance with the Commission's minimum distance spacing requirements at reference coordinates 32-53-36 NL and 109-49-42 WL

11. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

12. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective August 11, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

Communities	Channel No.
Pima, Arizona	*296A

13. The window period for filing noncommercial educational applications for Channel *296A at Pima will not be opened at this time. Instead, the issue of opening a filing window for this noncommercial allotment will be addressed by the Commission in a subsequent order.

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

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

FEDERAL COMMUNICATIONS COMMISSION

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