

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

APR 04 2006
FCC Mail Room

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-270
Table of Allotments,)	RM-11268
FM Broadcast Stations.)	RM-11272
(Aguila, Apache Junction, Buckeye, Glendale,)	
Peoria, Wenden, and Wickenburg, Arizona))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 29, 2006

Released: March 31, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. In response to two mutually exclusive Petitions for Rule Making filed by Black Entrepreneur Association, Inc. ("BEA") and Entravision Holdings, LLC ("Entravision"), the Audio Division considers herein a *Notice of Proposed Rule Making*.¹ Both BEA and Entravision filed comments and reply comments. For the reasons stated below, we grant BEA's Petition for Rule Making and dismiss Entravision's Petition for Rule Making as unacceptable for consideration.

2. BEA's Petition for Rule Making requests the allotment of Channel 229C3 at Wickenburg, Arizona, as that community's fifth local aural transmission service.² Entravision, the licensee of Station KVVA-FM, Channel 296C3, Apache Junction, Arizona, proposes to upgrade Channel 296C3 to Channel 296C1, reallocate Channel 296C1 to Peoria, Arizona, and modify the Station KVVA-FM license accordingly. To accommodate the Station KVVA-FM changes, Petitioner proposes to substitute Channel 229C3 for vacant Channel 297C3 at Aguila, Arizona, and upgrade Channel 295A at Buckeye, Arizona, to Channel 295C3, reallocate Channel 295C3 from Buckeye to Wenden, Arizona, and modify FM Station KDVA's license accordingly. In order to assure that Buckeye retains a local aural transmission service, Petitioner proposes that the Commission reallocate Channel 278C from Glendale to Buckeye, Arizona and modify FM Station KLNZ's license accordingly.

3. The proposed Channel 296C1 reallocation to Peoria conflicts with a one-step application filed by FM Station KKMR, Channel 293A, Arizona City, Arizona, to upgrade its Channel 293A to Channel 293C3 (File No. BPH-20000323ACA). In November of 2000, Station KKMR amended that application, but the transmitter site was not accurately reflected in the Media Bureau's Consolidated Data Base System (CDBS). Thus, at the time the *Notice* was prepared, the staff relied on that incorrect data in CDBS, which indicated that Entravision's Petition for Rule Making ("PRM") did not conflict with Station KKMR's amended application. Subsequently, the staff discovered this error. We then ascertained that on March 23, 2004, when Entravision filed its PRM, its proposal to upgrade Station KVVA-FM's Channel 296C3 to Channel

¹ *Aguila, Apache Junction, Buckeye, Glendale, Peoria, Wenden, and Wickenburg, Arizona*, 20 FCC Rcd 15202.

² Two commercial FM stations and one AM station are on the air. FM Channel 209 is vacant.

296C1 and to reallocate Channel 296C1 from Apache Junction to Peoria, Arizona, conflicted with the transmitter site of Station KKMR's application. Since Entravision's PRM was filed more than three years after Station KKMR's amendment to its application, the application has priority over Entravision's PRM.³ Accordingly, Entravision's Petition for Rule Making is being dismissed as unacceptable for consideration.⁴

4. With the dismissal of Entravision's Petition for Rule Making, BEA's Petition for Rule Making is the only proposal before us. BEA's proposal meets all of our technical engineering and other qualifications requirements and will provide a competitive commercial local FM transmission service to Wickenburg. In light of all the facts and circumstances, we shall grant BEA's request to allot Channel 229C3 to Wickenburg.

5. We conclude that the public interest would be served by the allotment of Channel 229C3 to Wickenburg, Arizona, since it will provide a new competitive local FM transmission service to that community. Channel 229C3 can be allotted to Wickenburg, Arizona, consistent with the Commission's technical requirements at coordinates of 33-53-49 NL and 112-54-45 WL, with a site restriction of 18.7 kilometers (11.6 miles) southwest of Wickenburg, Arizona. Concurrence in the allotment by the Government of Mexico is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for Channel 229C3 at Wickenburg, Arizona, is granted prior to receipt of formal concurrence by the Mexican government, the authorization will include the following condition: "Operation with the facilities specified herein for Wickenburg, Arizona, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico-United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico."

6. 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. Section 801(a)(1)(A).

7. 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 May 15, 2006, 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>
Wickenburg, Arizona	229C3, 242C, 287C2

8. A filing window for Channel 229C3 at Wickenburg, Arizona, will not be opened at this time.

³ See *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *pet. for recon. granted in part*, 8 FCC Rcd 4743 (1993).

⁴ See 47 C.F.R. §§ 73.208(a)(1) and (a)(3), as well as note 4, *supra*.

Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

9. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-11272) filed by Black Entrepreneur Association, Inc. IS GRANTED.

10. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-11268) filed by Entravision Holdings, LLC IS DISMISSED.

11. IT IS FURTHER ORDERED, That MB Docket No. 05-270 IS TERMINATED.

12. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
Media Bureau