

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 13 2004

Federal Communication Commission
Bureau / Office

In Re: Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
)
(Levan and Richfield, UT))

MM Docket No. 04-258
RM-11000

To: The Chief, Allocations Branch

COMMENTS OF MICRO COMMUNICATIONS, INC.

Micro Communications, Inc. ("Micro"), pursuant to Sections 1.415 and 1.420 of the Commission's rules, hereby respectfully submits its comments in the referenced matter.¹

1. In its Petition for Rulemaking that initiated this proceeding, Micro had requested that Section 73.202(b) of the Commission's rules (the FM Table of Allotments) be amended as follows:

<u>Community</u>	<u>Existing</u>	<u>Proposed</u>
Levan	244C	229C
Richfield	229C, 248C	244C, 248C

Concurrent with this relief, Micro further requested that the license of station KCFM(FM), Levan, Utah (of which Micro is the licensee) be modified to specify operation on Channel 229C in lieu of Channel 244C and that the license of station KCYQ(FM), Richfield, Utah (licensed to Mid-Utah), be modified to specify operation on Channel 244C in lieu of Channel 229C. In addition to its license, Mid-Utah holds a construction permit, BPH-20030304AAQ. Accordingly, Micro had also

¹ On August 30, 2004, Mid-Utah Radio, Inc. ("Mid-Utah") filed a pleading entitled "Opposition and Request for Expedious Recission of Notice of Proposed Relemaking and Order to Show Cause" (the Mid-Utah "Request"). These comments are addressed to the issues raised in that pleading as well as the matters raised in the Notice of Proposed Rulemaking herein. Accordingly, given the compound nature of Mid-Utah's pleading, to the extent appropriate, the instant Comments should be deemed a reply to Mid-Utah's Opposition and an opposition to Mid-Utah's Request.

requested that Mid-Utah's outstanding permit be modified to specify operation on Channel 244C.

2. On July 20, 2004, the Commission (by the Assistant Chief, Audio Division), issued a Notice of Proposed Rulemaking and Order to Show Cause ("NPRM") in which it noted that the changes requested by Micro warranted consideration since they could allow Station KCFM to expand its coverage area. However, its engineering analysis found that Micro's proposed site appeared to be blocked by a significant physical obstruction to deliver the required 70dBu signal to Levan and therefore the staff proposed allotment at the city center coordinates.² The staff further found the channel change at Richfield to have sufficient public interest benefits to justify the issuance of an order to show cause by which Mid-Utah was afforded until August 30, 2004 to demonstrate why its authorization for KCYQ should not be so modified.

3. On August 30, Mid-Utah filed its Request. Therein, it did not present any public interest reason why its authorizations should not be modified to change frequency to enable Micro to expand its coverage. Rather, it cited what it termed a fatal defect in Micro's original Petition for Rulemaking, in that protection had not been demonstrated to KCYQ's presently licensed site, which it claimed was short-spaced at the requested new channel to vacant allotments on Channel 246A at Beaver, Utah and on Channel 244C at Mesquite, Nevada. Consequently, Mid-Utah contended that the NPRM should be rescinded.³

4. Submitted herewith is an engineering statement of D S Broadcasting Company, Micro's consulting engineers. Therein, it is demonstrated that neither of these alleged problems is in fact an impediment to implementation of the proposed rulemaking herein.

5. Channel 246A is no longer allotted to Beaver. Indeed, both Mid-Utah's engineer and counsel should have been well aware of this, as it was specifically noted in an application they

² Micro agrees to use the Commission's suggestion of city center coordinates as the allotment site. The attached engineering statement addresses the population gains and losses at this proposed site, and compares these figures to those presented in its Petition with respect to its original site.

³ Mid-Utah also requested that the dates for filing comments and reply comments, as specified in the NPRM, be postponed pending resolution of the matters raised in its Request. As the staff has declined to take such action, the instant Comments are warranted.

recently filed with the FCC (on behalf of another entity).⁴

5. Even if an application or rulemaking petition is unacceptable at the time of filing by virtue of failing to protect both licensed and permitted facilities of a modifying facility, if subsequent events prior to staff review result in full acceptability, then adverse action is not warranted.⁵ Accordingly, the change in the allotment channel for Beaver is no longer a defect and therefore is not a ground upon which to rescind the NPRM.

6. Following deletion of former translator DK244AI, the allotment of Channel 244C at Mesquite has been vacant for the past two decades. The attached engineering statement demonstrates that Channel 244C can indeed be used at the KCYQ licensed site if a site restriction were to be imposed upon use of Channel 244C at Mesquite. As detailed in the engineering statement, coverage of Mesquite would be provided from the restricted site, and indeed the public interest would be served, as at least equivalent (and possibly greater) population could be reached from the restricted site than from the hypothetical site with which Mid-Utah has professed concern.⁶

7. In sum, the reallocations proposed herein will result in substantially greater service for KCFM, will provide additional service to a significant area that is currently underserved, will entail no changes in communities of license, and will have no adverse impact upon the service rendered by KCYQ, either as presently licensed or as contemplated by its outstanding construction permit, nor any other pending or authorized facility. Accordingly, we respectfully submit that the allotments proposed herein serve the public interest and should be implemented.

⁴ In a "KLGL Channel Study" included in Exhibit 28 to a minor change application for Station KLGL, Elsinore, Utah (BPH-20040621AAJ), a database listing of Channel 246A at Beaver Creek was stated to be "of no concern." The comment continued: "Pursuant to the Report and Order to MB Docket 02-290, RM-10527, RM 10772 and RM 10773, released June 10, 2004, the Commission ordered channel 259A be added at Beaver, UT and Channel 246A be deleted from Beaver, UT."

⁵ See, e.g., *WKVE, Semora, North Carolina*, 18 FCC Rcd 23411 (2003) at ¶ 26.

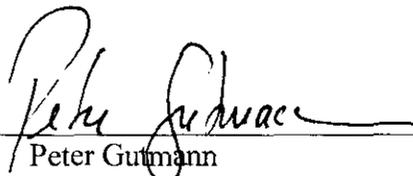
⁶ Although presently unapplied for, Channel 244C at Mesquite is one of the channels included in the upcoming Auction No. 37, scheduled for November 3. See, *Public Notice*, DA 04-1699, released June 10, 2004. If a site restriction were to be imposed upon Channel 244C at Mesquite and a construction permit were to be awarded prior to the conclusion of this proceeding, the permittee would be required to select a site accordingly. See, *Brightwood, Madras, Bend and Prineville, Oregon*, 15 FCC Rcd 22443 (2000). Of course, the far greater likelihood is that Mid-Utah will have completed construction of its outstanding permit and abandoned its licensed site well before then, thereby obviating any further need to protect Channel 244C at its licensed site.

8. As noted in the engineering statement, Mid-Utah already appears to have installed nearly all of the facilities needed to construct its permit for KCYQ, and so presumably completion is imminent, with licensing soon to follow. Accordingly, much of Mid-Utah's argument as to the need to protect its existing site would appear to be entirely hypothetical. In any event, it is clear that even were Mid-Utah's requested relief to be granted, Micro could refile its rulemaking petition immediately upon issuance of a license for the new KCYQ facilities.⁷ Consequently, the relief sought by Mid-Utah would be temporary at best. Indeed, as an alternative to the site restriction suggested herein for Mesquite, it would seem a more efficient use of Commission resources to defer action on the NPRM until KCYQ's license is issued.⁸

9. Micro states herewith its present intention to promptly apply for and construct facilities on the channel it has requested herein, if allotted. Micro further states its commitment to reimburse Mid-Utah (or any successor licensee of WCYQ) for its reasonable costs in changing frequency.

Respectfully submitted,

MICRO COMMUNICATIONS, INC.

By: 
Peter Gullmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
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September 13, 2004

⁷ See, *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1996) at ¶¶ 2 and 5.

⁸ Indeed, as noted in the engineering statement, were the present rulemaking to be dismissed, the result would be far more disruptive to Mid-Utah, as it would have to begin operation on channel 229, only to disrupt its listenership by changing to Channel 244 upon completion of the rulemaking.

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September 10, 2004

Federal Communications Commission
Washington, DC 20554

ATTN: John A. Karousos
Asst. Chief, Audio Division
Media Bureau

REF: MB Docket No. 04-258
RM 11000

Levan and Richfield, UT

ENGINEERING REPLY TO
OPPOSITION FILED BY
MID-UTAH RADIO, INC.

In its Opposition and Request for Expedious Rescission...filed August 30, 2004, Mid-Utah Radio, Inc., asserts a number of items relating to the engineering issues of this matter. They are addressed below.

1. Mid-Utah ("KCYQ") is opposing the change because the proposal by Micro Communications does not show an available channel for KCYQ at its presently-licensed site. Our work verifies that the proposed channel 244 does work at the presently-licensed site of KCYQ with one site restriction. This is addressed later.
2. Proponent was, in its initial Petition, attempting to work in favor of KCYQ by proposing the change BEFORE the construction of the new facilities for KCYQ on its existing channel. Such a situation would have prevented KCYQ from

having to install an antenna and transmitter tuned to its present frequency and then having to change those items in the future after their license was granted. If KCYQ wishes to proceed, Micro can wait until the new site is licensed and KCYQ gives up its current site and then re-file the Petition at which time Micro is certain to prevail.

It appears that KCYQ does, indeed, wish to proceed at the new site. They have a building and tower on the site and an antenna and transmission line in place. With these facts, it becomes abundantly clear that KCYQ has nearly completed the terms of its construction permit and is very nearly ready to commence transmission from that site.

3) However, to allow KCYQ to operate at its presently-licensed site on channel 244C, we need only to move the allocation coordinates of channel 244C at Mesquite, NV.

4) The proposed revised allocation site for channel 244C at Mesquite is significantly farther west than at present, 36 54 20 N 114 37 46 W. This is 50.1km from the city center coordinates of Mesquite. The propagation curves used by the FCC to determine 50/50 coverage show that the minimum distance for 70dbu coverage by a minimum class C station is 59.1km (100kw at 451maat). The change in coverage area will provide that at least the same number and possibly a greater number of people will be served from this location.

5) Thus, if KCYQ is relying upon not being able to utilize channel 244C at its presently-licensed site, protection for this channel at this site can be had without the involvement of any third parties because the necessary move of channel 244C at Mesquite, NV, is simply a change in allocation coordinates.

6) Further, Kevin Terry, who lists himself as a consulting engineer acting for Mid-Utah, fails to note that in his filing on behalf of another client in June, 2003, he was aware that channel 246A at Beaver, UT, had already been replaced by

channel 259A. The Commission's current database reflects that change. Thus, channel 246A is no longer a concern.

7) The proponent, Micro Communications, Inc., does hereby agree with the staff that the allocation point should be the coordinates of Levan, UT, and that their request in this Docket is amended to reflect an allocation of channel 229C at 39 33 31 N 111 51 40 W.

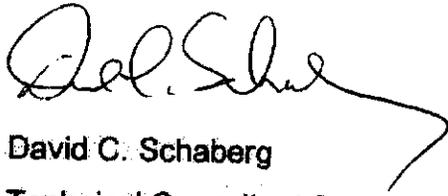
8) Staff also requested that, in light of the change of allocation coordinates, we recompute the population gains and losses. Exhibit 7 of the original Petition indicates that there is some white area and some underserved area which would be positively impacted by the change. With the new, center-city coordinates, our analysis indicates that, with full authorized facilities at the Levan allocation coordinates, there would be a total population reached of 352,535 persons within the 60 dbu contour. Areas, which lose service, include 31,074 persons resulting in a net gain of 207,938 persons.

Our coverage analysis shows that those in the loss area will all still receive more than 5 services. Because of the change in allocation point, some of the gain area will be receiving their sixth or greater service.

9) Therefore, the Rulemaking can proceed as requested but with the modification of KCYQ at their present site if they choose to utilize channel 244 and make that change before completing their construction at the new site.

Petitioner requests that, to resolve the questions raised by Mid-Utah, that the allocation coordinates of channel 244C at Mesquite, NV, be changed as noted in paragraph 4 hereof, above, and that the Petition as originally proposed by Micro be granted.

Very truly yours,

A handwritten signature in black ink, appearing to read "David C. Schaberg". The signature is fluid and cursive, with a long, sweeping tail that extends to the right and then curves downwards.

David C. Schaberg

Technical Consultant for

Micro Communications, Inc.

Channel 244C Allocation for Mesquite, NV
at new coordinates

REFERENCE
36 54 20 N
114 37 46 W

CLASS = C
Current Spacings
----- Channel 244 - 96.7 MHz -----

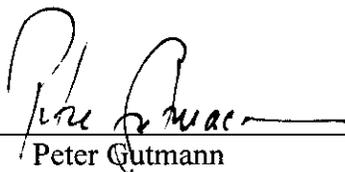
DISPLAY DATES
DATA 07-20-04
SEARCH 09-13-04

Call	channel	Location	Dist	Azi	FCC	Margin
ALLO	VAC 244C	Mesquite	NV 51.23	96.2	290.0	-238.77
KKLZ	LIC 242C	Las Vegas	NV 105.13	198.7	105.0	0.13
KRCYFM	LIC-D 244C2	Lake Havasu City	AZ 264.11	171.3	249.0	15.11
KXPT	LIC 246C	Las Vegas	NV 130.21	217.1	105.0	25.21
K244DD	LIC 244D	Orderville, Etc.	UT 182.78	76.3	151.0	31.78
K244CA	LIC-D 244D	Riveria, Etc.	AZ 184.33	183.2	151.0	33.33
K244CV	LIC-D 244D	Kingman	AZ 196.75	164.3	151.0	45.75
AP246	APP 246D	Kanarrville	UT 141.98	62.4	94.0	47.98
KWMX	LIC 244C2	williams	AZ 298.92	130.6	249.0	49.92

Certificate of Service

I, Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 13th day of September, 2004, caused copies of the foregoing Petition for Rulemaking to be mailed to the following by first-class United States mail, postage prepaid:

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Peter Gutmann