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

MAILED
AUG 22 2006
FCC Mail Room

In the matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 01-11
FM Broadcast Stations.	)	RM-10027
(Murrieta, Arcadia, Fallbrook,	)	RM-10322
Yucca Valley, and Desert Hot Springs,	)	
California)	)	
	)	

MEMORANDUM OPINION AND ORDER

(Proceeding Terminated)

Adopted: August 10, 2006 **Released: August 17, 2006**

By the Commission:

1. The Commission has before it: (1) an application for review of a *Report and Order* (*"R&O"*)[1] in this proceeding, filed by Big City Radio-LA, L.L.C. ("Big City"), the former licensee of Stations KSSE(FM), Channel 296A, Arcadia, California, and KSSD(FM), Channel 296A, Fallbrook, California;[2] and (2) a June 12, 2003, letter filed by MCC Radio L.L.C. ("MCC"), the current licensee of Station KDGL(FM), Channel 295B, Yucca Valley, California.[3] For the reasons set forth below, we deny the application for review.

I. Background

2. At the request of Helen Jones ("Jones"), a *Notice of Proposed Rulemaking*[4] was released in this proceeding, proposing the allotment of Channel 281A at Murrieta, California, as a first local aural service. In response to the *NPRM*, Big City filed a counterproposal,[5] proposing to substitute Channel 296B1 for Channel 296A at Arcadia and to modify the license for its Station KSSE(FM) accordingly. To accommodate this upgrade, Big City proposed two related channel changes. First, Big City requested the substitution of Channel 281A for Channel 296A at Fallbrook, California, and the modification of its license for Station KSSD(FM) to specify Channel 281A. Second, Big City proposed the downgrade, reallotment, and change of community license for Station KDGL(FM) from Channel 295B at Yucca

[1] 17 FCC Rcd 19458 (MB 2002).

[2] On January 31, 2003, the call signs for Stations KLYY(FM) and KSYY(FM) were modified to KSSE(FM) and KSSD(FM), respectively. On April 16, 2003, Big City assigned, pursuant to Commission approval, the licenses for these stations to Entravision Holdings, LLC ("Entravision"). Entravision subsequently filed a statement for the record, adopting the arguments pled by Big City and urging the Commission to grant the application for review. We will refer to the stations by their current call letters throughout this document.

[3] The call sign for Station KYOR(FM) was modified to KDGL(FM) on January 7, 2004.

[4] 16 FCC Rcd 2154 (MMB 2001) (*"NPRM"*).

[5] *See* 47 C.F.R. § 1.420(g)(3). This section provides in pertinent part that the license or construction permit for an FM station may be modified to a mutually exclusive, higher class adjacent or co-channel in the same community.

Valley, California, to Channel 295B1 at Desert Hot Springs, California.[6] Morris Communications Corporation, then the licensee of KDGL(FM), consented to these modifications.[7] The counterproposal was mutually exclusive with the *NPRM* because Channel 281A at Fallbrook was short-spaced to the proposed allotment of Channel 281A at Murrieta.[8] Moreover, Big City identified an alternate channel for use at Murrieta, Channel 245A, that would make possible the grant of the Jones and Big City proposals.

3. Jones filed reply comments, contending that Channel 245A could not provide city grade coverage to 100 percent of Murrieta. However, after the pleading cycle ended, Jones withdrew these reply comments as part of a joint motion with Big City for leave to file an amendment to resolve the conflict between these proposals. Under the amendment, Channel 281A would be allotted to Murrieta as proposed in the *NPRM,* and Channel 245A would be allotted to Fallbrook. The amendment also requested approval of a settlement agreement under which Jones would be reimbursed for her out of pocket expenses, not to exceed $3,500, for legal and engineering review of Big City's counterproposal and for preparation and filing of her reply comments.

4. The *R&O* approved the withdrawal of Jones' reply comments. It also denied the Station KSSE(FM) upgrade, notwithstanding the submission of a joint Jones/Big City proposal to resolve the technical conflict between the Murrieta and Fallbrook proposals. Finally, the *R&O* allotted Channel 281A to Murrieta as that community's first local transmission service.

5. The *R&O* set forth three reasons for denial of the upgrade of Station KSSE(FM), Arcadia, to Channel 296B1. First, the upgrade proposal would be short-spaced in violation of Section 73.207 of the Commission's Rules to second-adjacent Stations KROQ-FM, Channel 294B, Los Angeles, California, and KLVE(FM), Channel 298B, Los Angeles. The *R&O* rejected Big City's contention that its Class B1 upgrade proposal is exempt from meeting the second-adjacent channel separations of Section 73.207 by operation of Section 73.213(a)(4) of the Commission's Rules. The *R&O* found that this exemption permits a pre-1964, grandfathered short-spaced station to make facilities changes within its station class but not to upgrade to a higher class channel. The *R&O* noted that the staff had followed this rule interpretation in past cases. Second, Big City Radio's counterproposal failed to specify a theoretical fully-spaced referenced site.[9] Third, even though the proposed upgrade would ameliorate two grandfathered short-spacings, the proposal would increase the area and populations that would receive second-adjacent channel interference. Based on this analysis, the *R&O* also denied the other aspects of the counterproposal that were proposed to accommodate the Arcadia upgrade.

6. Big City seeks review only of that portion of the *R&O* that denied its counterproposal.[10] Big City contends that the staff action is in conflict with Commission policy. In support of this position, Big City argues that in 1997, the Commission eliminated any second-adjacent and third-adjacent channel spacing requirements for pre-1964, grandfathered short-spaced stations.[11] Because the second-adjacent channel short-spacings between Station KSSE(FM), Arcadia, and Stations KROQ(FM) and KLVE(FM), Los Angeles, have existed since 1964, Big City contends that it should be permitted to upgrade Station

[6] *See* 47 C.F.R. § 1.420(i). This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest.

[7] Due to a corporate reorganization, Morris Communications Corporation assigned the license for this station to MCC Radio, LLC, pursuant to a short-form application granted on September 18, 2001.

[8] *See* 47 C.F.R. § 73.207. The required spacing between second adjacent Class B and B1 stations is 71 kilometers.

[9] *See Id.* § 73.207(a).

[10] Big City does not seek review of the part of the *R&O* that allotted Channel 281A to Murrieta, California.

[11] *See Grandfathered Short Spaced Stations,* 12 FCC Rcd 11840 (1997).

KSSE(FM) to Channel 296B1 without designating a theoretical, fully-spaced site or considering potential interference. Such an approach, asserts Big City, is consistent with precedent because in allotment proceedings, pre-1964 grandfathered stations have been permitted to change their communities of license and/or transmitter sites and to downgrade their class of station without meeting Section 73.207 spacing requirements.

7. After the pleading cycle ended, MCC, the current licensee of Station KDGL(FM), Yucca Valley, California, and the successor in interest to Morris, advised the Commission that the agreement between MCC/Morris and Big City for the required downgrade and change of community of license for Station KYOR has been terminated and that MCC no longer consents to the modifications of its station as proposed in Big City's counterproposal. MCC argues that the Commission should dismiss as moot the counterproposal because the Commission will not impose downgrades or community of license relocations on a licensee without its consent.

II. Discussion

8. We agree with MCC that the withdrawal of its consent to the class downgrade, transmitter site relocation, and change of community of license for Station KDGL(FM), Yucca Valley, California prevents the implementation of Big City's counterproposal. It is well settled that the Commission will not require the involuntary downgrade of a station[12] or relocation of its transmitter site[13] to accommodate another rulemaking proposal, absent agreement from the affected station consenting to the downgrade or transmitter site relocation. Consequently, we will deny Big City's application for review.

9. We also clarify the scope of permissible facility changes for pre-1964, grandfathered short-spaced stations under Section 73.213(a)(4). The 1997 rule change, which exempts these stations from the second-adjacent and third-adjacent channel separation requirements set forth in Section 73.207, is intended to enable stations to make facilities changes to achieve maximum class facilities. Contrary to Big City's assertions, the Commission has not permitted pre-1964, grandfathered short-spaced stations to upgrade their facilities beyond class maximums when the stations could not meet the second and third-adjacent channel separation requirements set forth in Section 73.207. Indeed, as pointed out in the *R&O*, the Commission explicitly denied a waiver request by one such station in 1964 when it originally created this exemption.[14]

10. Accordingly, IT IS ORDERED That the aforementioned application for review filed by Big City Radio IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[12] *See Madisonville and College Station, Texas, et al.*, 18FCC Rcd 640 (MB 2003); and *Flora and Kings, Mississippi, and Newellton, Louisiana,* 7 FCC Rcd 5477 (MMB 1992).

[13] *See Claremore, Oklahoma, et al.*, 3 FCC Rcd 4037 (1988), *rev.denied,* 66 RR 2d 225 (1989); *see also Wasilla, Anchorage, and Sterling, Alaska,* 14 FCC Rcd 6263 (MMB 1999).

[14] *See Revision of FM Broadcast Rules*, 40 F.C.C. 868, 878 (1964).