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

In the Matter of	)		MAILED
	)		
Amendment of Section 73.202(b),	)	MB Docket No. 04-81	SEP 25 2006
Table of Allotments,	)	RM-10876	
FM Broadcast Stations.	)		FCC Mail Room
(Patagonia, Arizona)	)		

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 20, 2006 **Released: September 22, 2006**

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, Inc. ("Petitioner") proposing the reservation of vacant Channel 251A at Patagonia, Arizona for noncommercial educational ("NCE") use. Petitioner and Starboard Media Foundations, Inc., ("Starboard Media") filed comments. Desert West Air Ranchers Corporation ("Desert West") filed opposing comments and Motion for Leave to File Supplement and Supplement ("Supplement"). Petitioner filed a Reply to Opposition to Petition for Rulemaking ("Reply to Opposition").

2. **Background.** In *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), that 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, and that the population receiving a first and/or second NCE radio service exceeds 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 251A at Patagonia, Arizona for NCE use. 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

[1] *Patagonia, 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"*).

file comments demonstrating that the reservation 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 251A at Patagonia, Arizona. Starboard Media filed comments supporting the proposal, stating that it would file an NCE application for vacant Channel 251A at Patagonia, if reserved for NCE use.

5. Desert West filed comments opposing the NCE reservation of Channel 251A at Patagonia because the Petitioner's reservation showing failed to consider NCE Station KUAZ(AM), Tucson, Arizona, Station KUAT-FM, Tucson, Arizona and Station KNOG-FM, Nogales, Arizona. Desert West argues that the inclusion of these NCE stations would preclude the NCE reservation of Channel 251A at Patagonia because the reservation would only provide a first and/or second NCE service to six percent of the total population within the proposed 60 dBu contour. Desert West also contends that NCE stations could be licensed on Channels 218A and 219A, notwithstanding the potential impact of these stations on KUAT-TV, Channel 6, Tucson, Arizona. It claims that these NCE-FM stations would satisfy the Channel 6 protection requirements set forth in Section 73.525(c) of the Commission's rules.

6. Petitioner filed a Reply to Opposition stating that Desert West erroneously included an AM station in its reservation analysis.[5] It notes that the Commission has not reserved any particular NCE frequencies for exclusive use in (AM) service. Thus, Station KUAZ(AM) could apply to change from NCE to commercial status by filing a minor modification application. Petitioner also clarifies that its reservation showing did consider NCE Stations KUAT-FM and KNOG-FM despite Desert West's contrary claim. Finally, Petitioner argues that Desert West's engineering statement is flawed with respect to its population calculations regarding potential interference from either a Channel 218A or Channel 219A allotment and Channel 6 Television Station KUAT-TV, Tucson, AZ. Therefore, Petitioner contends that Channels 218A and 219A are precluded from usage because a proposed NCE station on either reserved band channel would not comply with Section 73.525(c) of the Commission's rules.

7. Desert West filed a Supplement addressing the Petitioner's arguments raised in its Reply to Opposition. Desert West contends that the Commission does not distinguish the type of local service, whether AM or FM, when conducting its analysis. Moreover, Desert West reiterates that the use of Channel 218A would cause interference to 1,028 persons within KUAT-TV's 77.2 dBu interference contour and the use of Channel 219A to 1,010 persons within KUAT-TV's 81.5 dBu contour. As such, the use of either channel complies with Section 73.525(c) of the Commission's rules, which permits the licensing of an FM station predicted to cause TV Channel 6 interference to 3,000 or fewer potential viewers.

8. **Discussion.** Channels 218A and 219A, at Patagonia are, in fact, available for NCE use. We note that these reserved band channels are less than 166 and 159 kilometers from Station KUAT-TV, respectively. Therefore, these reserved band channels are subject to the TV Channel 6 protection requirements of Section 73.525.[6] However, fewer than 3,000 persons are predicted to receive interference.[7] Additionally, both the Channels 218A and 219A allotments comply with Sections 73.509 and 73.515 of the Commission's Rules.[8] Moreover, our staff engineering analysis reveals that a proposed

[5] *See Pima, Arizona,* Report and Order, 20 FCC Rcd 11137 (MB 2005) (AM stations are not considered in reservation analysis).

[6] *See* 47 C.F.R. § 73.525(a).

[7] *See* 47 C.F.R. § 73.525(c).

[8] *See* 47 C.F.R. §§ 73.509, 73.515.

Channel 218A or Channel 219A at reference coordinates 31-33-05 NL and 110-44-45 WL would provide a first and/or second NCE service to 8,118 persons (31 percent) of the total population of 26,013 persons. Therefore, the reservation request for Channel 251A at Patagonia is denied.

9. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Report and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A) because the proposed rule was denied.

10. IT IS ORDERED, That the Petition for Rule Making filed by Petitioner IS DENIED.

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau