

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

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 05-131 |
| Table of Allotments, |) | RM-11208 |
| FM Broadcast Stations. |) | RM-11209 |
| (Redding, Cottonwood, and Shasta |) | RM-11367 |
| Lake, California) ¹ |) | RM-11368 |
| |) | RM-11369 |
| |) | |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 13, 2007

Released: June 15, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making* issued in response to two rulemaking petitions filed by Linda A. Davidson ("Davidson") and Paul Barth ("Barth") (collectively, "Petitioners");² (2) supporting comments filed individually by the Petitioners; and (3) counterproposals filed by Michael R. Birdsill ("Birdsill"), Wild Thing Broadcasters ("WTB"), and Educational Media Foundation ("EMF").³ For the reasons discussed below, we grant Birdsill's and EMF's counterproposals and deny the Petitioners' rulemaking petitions and WTB's counterproposal.

2. **Background.** Davidson and Barth each propose the allotment of Channel 221A at Redding, California, (population 80,865) as its tenth aural service. Petitioners have separately restated their present intentions to apply for and construct facilities on Channel 221A, if allotted. In response to the *NPRM*, three counterproposals were filed. Birdsill requests the allotment of Channel 221A at Cottonwood, California, (population 2,950) as a first local service. WTB proposes the allotment of higher class Channel 221C3 at Cottonwood. EMF, licensee of noncommercial educational station KKRO(FM), Redding, California, proposes the allotment of Channel 224A at Shasta Lake, California (population 9,008) as a third local service.⁴

3. In support of their counterproposals, both Birdsill and WTB contend that Cottonwood is a

¹ The communities of Cottonwood and Shasta Lake have been added to the caption.

² *Redding, California*, Notice of Proposed Rule Making, 20 FCC Rcd 6224 (MB 2005) ("*NPRM*").

³ The three counterproposals were placed on *Public Notice*, Report No. 2813.

⁴ EMF notes that the two allotments for Shasta Lake are listed in 47 C.F.R. § 73.202(b) as Shasta Lake City and that the stations licensed on these channels, Stations KESR(FM) and KNNN(FM), are licensed to Shasta Lake City. EMF asserts that the correct name for the community is Shasta Lake according to the community's web site and the U.S. Census. We agree. The U.S. Census Bureau lists the community as Shasta Lake city, with the word "city" being a descriptor as opposed to the name of the community. In order to have consistency with the U.S. Census, we hereby make an editorial correction to 47 C.F.R. § 73.202(b) and change the listing for these channels to Shasta Lake. Because of this editorial change, we will send courtesy copies of this *Report and Order* to the licensees of the Shasta Lake stations.

community for allotment purposes. They point out that Cottonwood is listed by the U.S. Census Bureau as a Census Designated Place. Further, it has a Chamber of Commerce, 32 businesses that identify themselves with Cottonwood, a local school district, a water district, a fire department, and a Lions Club. Birdsill's and WTB's counterproposals are mutually exclusive with the Petitioners' rulemaking petitions because Channels 221A and Channel 221C3 at Cottonwood conflict with Channel 221A at Redding under the Commission's minimum distance separation requirements.⁵

4. EMF states that Shasta Lake already has been found by the Commission to be a community for allotment purposes because it has two licensed FM stations. EMF contends that the allotment of Channel 224A at Shasta Lake is preferable to the Petitioners' proposed Redding allotment under Priority (4) of the FM Allotment Priorities⁶ because the proposed Shasta Lake facility will provide a new radio broadcast service to 155,310 persons, while the Petitioners' proposals will provide service to either 151,486 (Davidson) or 152,344 (Barth) people. EMF's counterproposal is mutually exclusive with the Petitioners' rulemaking petitions because Channel 224A at Shasta Lake conflicts with Channel 221A at Redding under the Commission's minimum distance separation requirements. Further, EMF's proposed allotment of Channel 224A at Shasta Lake is mutually exclusive with WTB's proposed allotment of Channel 221C3 at Cottonwood but is compatible with Birdsill's proposed allotment of Channel 221A at Cottonwood under the Commission's minimum distance separation requirements.

5. In his reply comments, Birdsill opposes EMF's counterproposal. In support of this position, Birdsill asserts that the allotment of Channel 224A at Shasta Lake would limit transmitter site selection for Channel 221A at Cottonwood due to adjacent channel protection requirements. Likewise, Birdsill contends that the allotment of Channel 224A at Shasta Lake would severely limit transmitter site selection for vacant FM Channel 225A at Burney, California. Birdsill states that he intends to apply for the new Burney station. Based upon his own personal knowledge of transmitter sites near Burney, Birdsill contends that the only viable transmitter site is an antenna farm located 9.4 kilometers west of Burney.⁷

6. **Discussion.** Conflicting proposals are comparatively considered under the Commission's FM allotment priorities.⁸ A staff engineering analysis has revealed that there are no alternate channels available at Redding, Cottonwood, or Shasta Lake, California, to eliminate the conflicts between the Petitioners' rulemaking petitions and Birdsill's, WTB's, and EMF's counterproposals. Accordingly, the proposals must be compared.

7. Under the FM Allotment Priorities, a first local service at Cottonwood is preferred over a tenth aural service at Redding or a third local service at Shasta Lake because a Cottonwood proposal triggers higher allotment Priority (3). By way of contrast, the Redding and Shasta Lake proposals trigger Priority (4), other public interest matters. Consequently, we will allot a channel at Cottonwood to provide that community with a first local service.⁹

8. We also must consider whether to allot Channel 221A or higher class Channel 221C3 at Cottonwood. We note that a Channel 221A allotment at Cottonwood, unlike a Channel 221C3 allotment,

⁵ See 47 C.F.R. § 73.207.

⁶ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

⁷ Birdsill states that the reference coordinates for this antenna farm are 40-52-29 NL and 121-46-13 WL.

⁸ See note 6 *supra*.

⁹ We find that Cottonwood is a community for allotment purposes. It is a Census Designated Place and has sufficient social and economic indicia of community status such as businesses, a local school district, a water district, a fire department, and civic organizations.

would not conflict with a Channel 224A allotment at Shasta Lake. We believe that the public interest would be better served by allotting lower class Channel 221A at Cottonwood because this allotment will make possible a new allotment at Shasta Lake. This approach is consistent with our policy under Priority (4) of generally favoring a new allotment over an upgrade in channel class because the former represents a new primary service.¹⁰ Our view is further buttressed by the fact that no showing has been submitted by WTB that the need for the higher class channel at Cottonwood is greater than the need for a new allotment at Shasta Lake in terms of service to underserved populations.

9. We reject as speculative Birdsill's contention that the allotment of Channel 224A at Shasta Lake will severely limit site availability for Channel 221A at Cottonwood. Generally, in rulemaking proceedings to allot FM channels, there must be a theoretical site that meets the Commission's technical rules, and we will presume at the allotment stage that the theoretical site is available.¹¹ However, a party can rebut this presumption with a ". . . sufficiently compelling showing demonstrating that no sites complying with the Commission's distance separation and other technical requirements exist."¹² In this case, Birdsill has failed to make such a showing. Further, a limited area in which to locate a fully spaced transmitter site is not an impediment to making an allotment.¹³ Likewise, Birdsill's argument that the allotment of Channel 224A at Shasta Lake would severely limit the availability of a site for activating vacant Channel 225A at Burney, California, appears to be unfounded. Although Birdsill claims that there is only one viable site for the Burney allotment, we note that the auction winner for Channel 225A at Burney recently filed a long-form construction permit application for this channel, specifying a site different from the site identified by Birdsill.¹⁴

10. Finally, Birdsill contends that Channel 224A should not be allotted at Shasta Lake because it may foreclose the possibility of allotting this or adjacent channels to other area communities in the future. Although the Commission formerly considered the preclusive effect that allotments would have on co- and adjacent channel allotments in other communities when FM was in its early development, this policy was abandoned when the FM Priorities were revised in 1982.¹⁵ Accordingly, we will allot Channel 224A at Shasta Lake.

11. **Technical Considerations.** Channel 221A can be allotted to Cottonwood at Birdsill's specified site, which is located 1.4 kilometers northwest of Cottonwood in compliance with the Commission's minimum distance mileage separations.¹⁶ The reference coordinates for this allotment are 40-23-45 NL and 122-17-22 WL. Channel 224A can be allotted at Shasta Lake at EMF's proposed site, which is located 8.0 kilometers southwest of Shasta Lake. The reference coordinates for this allotment are 40-38-51 NL and 122-27-19 WL.

12. **Ordering clauses.** Accordingly, pursuant to the authority contained 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,

¹⁰ See, e.g., *Benton, Arkansas*, Report and Order, 3 FCC Rcd 4840 (MMB 1988) (preferring a new FM allotment over the upgrade of an existing station under Priority (4)).

¹¹ *West Palm Beach, Florida*, Memorandum Opinion and Order, 6 FCC Rcd 6975, 6976 (MMB 1991).

¹² *Key West, Florida*, Report and Order, 3 FCC Rcd 6423 (MMB 1988).

¹³ See, e.g., *Randolph and Brandon Vermont*, Report and Order, 6 FCC Rcd 1760 (MMB 1991) (rejecting an argument that a restricted area of 1.5 square miles is too small and not suitable to locate a fully-spaced transmitter because of a lack of documentation).

¹⁴ See File No. BNPH-20070501AAJ. The transmitter site specified in this application is 40-53-03 NL and 121-37-49 WL. See also *Public Notice*, Report No. 26484.

¹⁵ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d at 93-95.

¹⁶ 47 C.F.R. § 73.207.

That effective July 30, 2007, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, as follows:

| <u>Community</u> | <u>Channel No.</u> |
|-------------------------|--------------------|
| Cottonwood, California | 221A |
| Shasta Lake, California | 224A, 257C2, 296C3 |

13. A filing window for Channels 221A at Cottonwood and 224A at Shasta Lake will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

14. 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).

15. IT IS FURTHER ORDERED, That the counterproposals (RM-11367 and RM-11369) filed by Michael R. Birdsill and Educational Media Foundation ARE GRANTED.

16. IT IS FURTHER ORDERED, That the rulemaking petitions (RM-11208 and RM-11209) filed by Linda A. Davidson and Paul Barth and the counterproposal (RM-11368) filed by Wild Thing Broadcasters ARE DENIED.

17. IT IS FURTHER ORDERED, That an editorial correction will be made to 47 C.F.R. Section 73.202(b) under California, to change the name of the community of Shasta Lake City to Shasta Lake.

18. IT IS FURTHER ORDERED, That a copy of this *Report and Order* be sent by Certified Mail, Return Receipt Requested, to Linda A. Davidson, 1434 24th Street, Santa Monica, CA 90404; Paul Barth, P.O. Box 494430, Redding, CA 96049; Michael R. Birdsill, P.O. Box 1921, Chico, CA 95927; Steve Wilder, Wild Thing Broadcasters, P.O. Box 716, Garden Grove, CA 92842 ; Veronica D. McLaughlin-Tippett, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, DC 20037 (counsel for Educational Media Foundation); Results Radio of Redding Licensee LLC, 1355 North Dutton Avenue, Suite 225, Santa Rosa, CA 95401 (licensee of Station KESR(FM), Shasta Lake City, CA); William H. Fitz, Esq., Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington D.C. 20004 (counsel for KESR(FM)); Mapleton Communications LLC, 10900 Wilshire Boulevard, 15th Floor, Los Angeles, CA 90024 (licensee of KNNN(FM), Shasta Lake City, CA); and Raymond B. Grochowski, Esq., Latham & Watkins LLP, 555 Eleventh Street, N.W., Suite 1000, Washington, D.C. 20004 (counsel for KNNN(FM)).

19. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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