

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

FILED/ACCEPTED

FEB 25 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket 07-297
Table of Allotments,)	RM-11413
FM Broadcast Stations.)	
(Pima and Pinetop, Arizona))	

To: Office of the Secretary
Attn: Chief, Media Bureau

COMMENTS

Petracom of Holbrook, LLC ("Petracom"), licensee of Station KRFM(FM), Show Low, Arizona, by its attorneys, hereby respectfully submits its Comments in response to the *Notice of Proposed Rule Making*, DA 08-68, released January 11, 2008, (the "NPRM") in the above-captioned proceeding. With respect thereto, the following is stated:

1. The above-captioned matter is one part of a "hybrid" application and rule making proceeding,, whereby Circle S Broadcasting Co. ("Circle S"), licensee of Station KSWG(FM), Wickenburg, Arizona, and Yavapai Broadcasting Corporation ("Yavapai"), licensee of KKLD(FM), Cottonwood, Arizona, seek to modify their respective stations' communities of license. Circle S and Yavapai have indicated that their applications and the petition for rule making in the instant proceeding were filed pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (the "Changes of Community Order").

2. In order to accommodate the proposed changes to the KSWG facilities, Circle S filed the petition for rule making in this proceeding, and the Commission has proposed in the NPRM

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to substitute Channel 249C1 for Channel 294C1 at Pinetop, Arizona, and to substitute Channel *289A for vacant Channel *296A at Pima, Arizona. The difficulty with this proposal is that the *NPRM* is based in part upon a factual error, and, as a result, the entire hybrid proceeding is not in compliance with the procedures outlined in the *Changes of Community Order*.

3. Specifically, the *NPRM* repeats the assertion made in the Petition for Rulemaking in this proceeding that Channel 294C1 at Pinetop is vacant. Such is not the case, however. In the *Changes of Community Order*, the Commission noted that an "occupied" allotment is one which is "licensed, permitted, or reserved," and "reserved" facilities are "those for which applications are pending." *Changes of Community Order*, 21 FCC Rcd 14221-22 ¶ 15. At the time that the Petition for Rulemaking was filed, there were two applications for the Pinetop allotment pending, File No. BPED-19951108MB (Facility ID No. 78349) and File No. BPH-19951109MG (Facility ID No. 78413). In the interim, the latter application has been granted, and the call letters KWSK have been assigned to the facility. Thus, it is clear that Channel 294C1 at Pinetop is not now a vacant channel, nor, in fact, was it so at the time that the Petition for Rulemaking was filed.

4. As a result, the change in channel proposed for that allotment cannot be accomplished through the instant rule making proceeding but rather must be the subject of the contingent applications filed. The inclusion of KWSK(FM) as a facility to be modified by application violates the limits imposed by the *Changes of Community Order* as to the number of involuntary channel changes that may be proposed, as well as the total number of applications that may be filed pursuant to Section 73.3517(e) of the Commission's Rules. Circle S has proposed in its

application the modification of its own facilities as well as an involuntary channel substitution for Petracom's station KRFM(FM). Yavapai's application requests modification of its own facilities to specify a new channel, as well as a channel substitution for KWKM(FM), St. John's, Arizona. These two applications, filed as a part of a contingent application group, thus propose changes to four stations. The addition of the now-authorized Pinetop facility, KWSK(FM), adds a fifth application to be filed, in contravention of the four application limit. The Commission has indicated that the four-application limit applies to both "pure" application proceedings and "hybrid" proceedings, and that both voluntary and involuntary channel changes are to be counted toward that limit. *Changes of Community Order*, 21 FCC Rcd. at 14223, ¶ 17. It also must be noted that the channel substitutions for KRFM(FM), KWKM(FM), and KWSK(FM), a total of three stations, are all involuntary. Therefore, the proposed changes also violate the Commission's policy which continues to limit the number of involuntary channel substitutions which may be proposed to two. *Id.* at 14222, ¶ 16.

5. Moreover, the permittee of KWSK(FM), William S. Konopnicki, has filed an application for modification of the KWSK(FM), File No. BMPH-20070518AAD. That application proposes a different relocation and channel change for the station, with a related application proposing to relocate another station to Pinetop. While Petracom has not undertaken any detailed engineering or legal analysis of the KWSK(FM) modification application, it would note that the application itself, as amended, states at Exhibit 1 that it is in technical conflict with the hybrid application/rule making proceeding which is the subject of the *NPRM*.

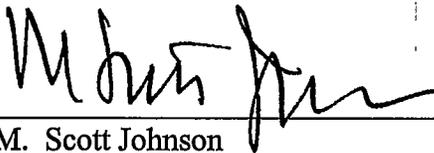
6. Accordingly, for the reasons set forth above, the Commission may not adopt the proposal put forward by the *NPRM*. That proposal is in conflict with the Commission's

processing rules and policies for hybrid application/rule making proceedings for changes of channel and community of license.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing COMMENTS were served by first class mail, postage prepaid, this 25th day of February, 2008, on the following:

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