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

MAILED

OCT 14 2008

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Elko, Nevada))

MB Docket No. 07-281
RM-11408

FCC

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 8, 2008

Released: October 10, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*¹ issued at the request of L. Topaz Enterprises, Inc. ("Petitioner"), proposing to allot Channels 274C3 and 284C3 at Elko, Nevada. Petitioner has concurrently filed a FCC Form 301 new station application² for Channels 274C3 and 284C3 at Elko, and was required to submit a filing fee pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.³ Petitioner certifies in its petition, and reiterates in its comments that if the requested FM channels are allotted and its concurrent applications are granted, it will participate at auction for the channels. One comment in opposition was filed by Ralph J. Carlson, President of Stations KRJC(FM) and KTSN(AM), Elko, Nevada ("Carlson").

2. Carlson opposes the allotment of additional channels to the community. He states the addition of two more radio stations into a market which he claims has 30,763 persons, will create a financial hardship on the existing stations.

3. We will grant the allotment of Channels 274C3 and 284C3 at Elko. Contrary to Carlson's concern, we believe that the proposal would serve the public interest, because it would provide a fifth and sixth local services to the community of Elko, 2000 U.S. Census population 16,980 persons, under Priority 4 of the FM allotment priorities.⁴ In addition, we have a proponent who has filed applications for both channels and has pledged to build and operate the stations, should he prevail at auction. We do not give weight to third-party specific economic issues when making allotment determinations, particularly when they are vague and speculative, as are Carlson's allegations.⁵

¹ *Elko, Nevada*, Notice of Proposed Rule Making, 22 FCC Rcd 21658 (MB 2008).

² File Nos. BNPH-20070711ABR and BNPH-20070717ABV.

³ Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*")

⁴ 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 (1988).

⁵ See *Potts Camp and Saltillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001); see also *Albion, Nebraska*, Memorandum Opinion and Order, 10 FCC Rcd 11,927 (1995); *Southampton, New York*, Memorandum Opinion and Order, 10 FCC Rcd 11,516 (1995).

4. A staff engineering analysis indicates that Channels 274C3 and 284C3 can be allotted to Elko consistent with the minimum distance separation requirements of the Commission's rules, without a site restriction at the city center coordinates 40-49-57 NL and 115-45-44 WL.

5. 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).

6. Accordingly, pursuant to the authority found 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 That effective, November 24, 2008, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Elko, Nevada	274C3, 284C3

7. A filing window period for Channels 274C3 and 284C3 for Elko, Nevada will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

8. IT IS FURTHER ORDERED That the comments filed by Ralph J. Carlson, ARE DENIED.

9. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Victoria McCauley, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau