

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments ) MB Docket No. 05-263  
FM Broadcast Stations ) RM-11269  
(Grants and Church Rock, New Mexico) )

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

COMMENTS

Reynolds Technical Associates (“RTA”), hereby submits Comments<sup>1</sup> in support of its Petition for Partial Reconsideration which challenges a new policy set forth in paragraph 23 of the *Report & Order*.<sup>2</sup> The new policy created very restrictive standards that limit the circumstances in which the Bureau will allow the downgrade in class of a vacant allotment. In addition, a recent case demonstrates that the Bureau needs to reconsider this new policy and reconcile the inconsistencies between the requirements justifying a downgrade in class and the actual deletion of a vacant channel. RTA believes that the previous policy based on Section 307(b) considerations needs to be reinstated.

1. In the instant case, the downgrade of the vacant channel at Bagdad, Arizona was requested. The proponent demonstrated that under Section 307(b) all of the Commission’s four allotment priorities would be satisfied—white and grey area service, first local service and new

<sup>1</sup> These Comments are timely filed. See 74 Fed. Reg. 41700 (August 18, 2009).

<sup>2</sup> 22 FCC Rcd 9426 (MB 2007).

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service to additional areas.<sup>3</sup> In order to achieve all of these public interest benefits, it was necessary to request the downgrade of the vacant allotment at Bagdad RTA cited numerous cases in which the downgrade was approved without any additional showing other than the overall public interest benefits of the proposal.<sup>4</sup> The policy made sense and had not been questioned in any of the cited cases. Indeed the issue had not been raised in the instant case and no one objected to the downgrade. Yet, the Bureau held for the first time that it would only downgrade a vacant allotment after the channel had been through an auction.<sup>5</sup> The Bureau went so far as to state that “[i]n virtually all cases, we will not downgrade a “drop-in” channel.”<sup>6</sup> However RTA demonstrated by the cited cases that this was not an accurate statement.

2. Recently the Bureau had the occasion to discuss its policy on deleting vacant channels.<sup>7</sup> In *Nevada City*, the Bureau held that vacant allotments did not need to be made available for application and for an auction before being deleted. Rather, all that needed to be done was to issue the Notice of Proposed Rule Making (“NPRM”) and ask whether there are any parties interested in applying for the channel. If no one expresses interest, then the channel can be deleted which is what happened in the *Nevada City* case. But when it comes to the downgrade of a vacant channel, the new policy is much more restrictive. No reason has been offered by the Bureau for the discrepancy in treatment of these two situations. It would seem to follow that with a downgrade, at least the community will receive local service and therefore it should not be

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<sup>3</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Specifically, the proposal would have resulted in (i) first aural service to 802 persons, (ii) second aural service to 395 persons, (iii) first local service to three communities with a total population of 4,702 persons, (iv) and a significant gain in overall service.

<sup>4</sup> See, e.g., *Weaverville, Palo Cedro, and Alturas, California*, 21 FCC Rcd 5131 (MB 2006) (“*Weaverville*”); *Dinosaur and Rangely, Colorado, et al.*, 19 FCC Rcd 10327 (MB 2004) (“*Dinosaur*”); *Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, Tennessee*, 17 FCC Rcd 14472 (MB 2002) (“*Bethel Springs*”); *Othello, East Wenatchee and Cashmere, Washington, and Wallace, Idaho*, 6 FCC Rcd 6476 (MMB 1991) (“*Othello*”).

<sup>5</sup> Citing *Bethel Springs*.

<sup>6</sup> *Grants Report and Order*, at ¶5.

<sup>7</sup> *Nevada City and Mineral, California* (“*Nevada City*”), DA 09-1032, released May 8, 2009.

as difficult to show that the channel should be downgraded. But, based on this new policy, the Bureau wants to be absolutely sure that there is no interest in the higher class channel by waiting for the actual auction process. Unlike the deletion of the channel, it is not enough to propose the downgrade in the NPRM and solicit expressions of interest.<sup>8</sup>

3. RTA urges the Bureau to reconsider its new policy. Now that the Bureau is aware that its policy had consistently been based on the public interest benefits of the overall proposal, it should consider reinstating that policy. Also since the Bureau has been following a much less restrictive policy for the deletion of vacant channels, it should at least consider using the same policy for the downgrade in class of a vacant channel. If there is a rationale behind the different policies and a rationale for overturning the previous policy at this point, the Bureau needs to express it. RTA argued in its Petition for Partial Reconsideration that the new policy should be the subject of notice and comment. The Bureau also still has the option to follow that approach in this proceeding.

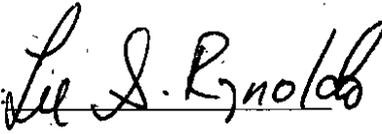
4. RTA believes the best policy is to continue the evaluation of the overall public interest benefits of the downgrade request under Section 307(b) standards. Accordingly, RTA urges the Bureau to reverse this new policy refusing to downgrade vacant channels that have not been first made available for application.

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<sup>8</sup> See note 5. This policy was recently discussed in *Lane and Quinby, South Carolina, Memorandum Opinion and Order*, (DA 09-1808), released August 14, 2009. However in that case multiple expressions of interest had been filed in Auction 79 for the Quinby channel.

Respectfully submitted,

REYNOLDS TECHNICAL ASSOCIATES

By: 

Lee S. Reynolds  
Vice President

September 2, 2009

**CERTIFICATE OF SERVICE**

I, Lee S. Reynolds, hereby certify that I have on this 2nd day of September, 2009, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“Petition for Partial Reconsideration”** to the following:

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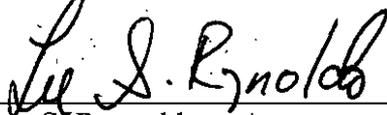
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