

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

In the Matter of)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations.)
(Willow Creek, California))

MB Docket No. 10-189
RM-11611

FILED/ACCEPTED

NOV 15 2010

Federal Communications Commission
Office of the Secretary

To: The Commission

MIRIAM MEDIA, INC.
COMMENTS IN SUPPORT OF RULEMAKING AND
SHOWING OF CONTINUED INTEREST

Miriam Media, Inc. ("Petitioner"), pursuant to Section 1.420, hereby submits its comments and showing of continued interest in connection with the Notice of Proposed Rulemaking, released by the Audio Division on September 27, 2010 in the above-captioned proceeding. Petitioner reiterates its interest in implementing the allotments outlined in its Petition for Rulemaking, as well as its representation that if the allotment is made, Petitioner will participate at auction for the allotment, and if successful will construct the station. Petitioner has already filed an application for a construction permit (BSFH-20061218ADR) along with the requisite filing fee in accordance with FCC policy.¹

As stated in Petitioner's October 15, 2009 Petition for Rulemaking, Channel 258A may be allotted to Willow Creek consistent with all of the Commission's spacing and engineering criteria, and in furtherance of the public interest. First, this backfill replacement channel for the sole aural service at Willow Creek, would be permissible because Miriam is seeking to move an

¹ Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, 21 FCC Rcd 14212 (2006) ("Revised Allotment Procedures R&O").

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unbuilt FM facility to another community and there is no potential danger of interrupting established service.² Second, with regard to the allotment of 258A to this community, Willow Creek has already been deemed a community for allotment purposes (see currently allotted 253A FM). Petitioner continues to believe, given the unique difficulties of attempting to serve such a large, sparsely populated and mountainous community, that its proposed coverage of the central town of Willow Creek, as defined by the alternative community boundary established by Humboldt County and the Willow Creek Community Services District, as well as the entire population of the Willow Creek CDP, within its 70 dBu city grade contour, demonstrates substantial compliance with Section 73.315(a) of the Rules and is consistent with established Commission precedent.³

Accordingly, as in the *Beatty and Goldfield, Nevada*, and *Cape Coral Florida* cases the Commission should find that Petitioner's proposal substantially complies with Section 73.315(a)

2 Petitioner, auction winner of Permit MM-FM521-A, for Channel 253A at Willow Creek, by a simultaneously filed amendment to its pending application BNPH-20070406ABY, has proposed a change of community of license for the unbuilt 253A station from Willow Creek to Loleta, California, a change of Channel to 254 and an upgrade of the station from a Class A to a Class C1 facility. As part of that proposal Petitioner continued to seek the involuntary relocation of Stations KJNY(FM) at Ferndale, California from 256C1 to 249C1 at its present site, and KPOD-FM at Crescent City, California from 250C2 to 260C2 (modified from the previously proposed 259C2) at its present site. Petitioner continues to maintain its willingness to pay the reasonable and prudent expenses related to those relocations. Under *Beatty and Goldfield, Nevada*, Report and Order in MB Docket No. 08-68, DA 09-413, RM-11421, at ¶2 & n4, released February 20, 2009; See also *Linden, Texas, et al.*, Report and Order, 16 FCC Rcd 10853 (MMB 2001), the proposed removal of unbuilt facilities, like Willow Creek's 253A does not present the same loss of service concerns as removal of a licensed station.

3 Willow Creek is an unincorporated Census Designated Place (CDP) with an exceedingly large boundary covering some 259 square kilometers in a sparsely populated mountainous region incorporating significant amounts of wilderness area within the Six Rivers National Forest. Nearly all of the population of Willow Creek resides within a narrow swath of land near the center of the CDP, and within the County defined Willow Creek Community Services District. While Petitioner was unable to find a reference location that would allow predicted coverage to the entire CDP, it was able to identify a site (at 40-57-29 NL and 123-42-23 WL) that would cover the Community Service District boundary as well as the entire population of the CDP. The FCC has previously waived its requirement for FM allotment proceedings that a new "drop-in" must provide a 70 dBu coverage signal contour to the entire proposed community in accordance with Section 73.315(a) of the Rules where a petitioner can demonstrate substantial compliance with the general rule. See *Beatty and Goldfield, Nevada*, Notice of Proposed Rulemaking in MMB Docket 08-68, DA 08-2273, released October 10, 2008 (proposed city-grade service did not encompass the entire rural and sparsely populated CDP, But did cover entire town site where most potential listeners resided); and *Cape Coral, Florida*, Federal Register, 47 FR 8362 (1982) (substantial compliance satisfied by showing that principal community contour would cover populated areas).

of the Rules and that the proposed allotment of Channel 258A to Willow Creek, California in the instant proceeding, as well as the related Petitioner hybrid application proposing to move unbuilt 253A station from Willow Creek to Loleta, California, change its Channel to 254 and upgrade the station from a Class A to a Class C1, would best serve the public interest convenience and necessity.

Respectfully submitted,

MIRIAM MEDIA, INC.

By:  _____

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November 15, 2010

CERTIFICATE OF SERVICE

I, Evan Carb, hereby certify that copies of the foregoing "Comments in Support of Rulemaking and Showing of Continued Interest" were served this 15th day of November, 2010 on the following parties via first class mail of the United States Postal Service, postage prepaid, at the following addresses, unless otherwise indicated:

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A handwritten signature in black ink, appearing to read "Evan Carb", written over a horizontal line.

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