

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-94
Table of Allotments,)	RM-9532
FM Broadcast Stations.)	RM-9834
(Hinton, Whiting, and Underwood, Iowa;)	
and Blair, Nebraska) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 21, 2001;

Released: March 2, 2001

By the Chief, Allocations Branch:

1. At the request of Mountain West Broadcasting ("petitioner"), the Allocations Branch has before it the Notice of Proposed Rule Making, 14 FCC Rcd 4433 (1999), proposing the allotment of Channel 267A at Hinton, Iowa (RM-9532). Comments, a counterproposal, and supplements were filed by Sunrise Broadcasting of Nebraska, Inc. ("Sunrise"), licensee of Station KISP(FM), Channel 268C3, Blair, Nebraska. First, Sunrise proposed the substitution of Channel 267C2 for Channel 268C3 at Blair, Nebraska, and the reallocation of Channel 267C2 from Blair to Whiting, Iowa. Sunrise also requested that Station KISP(FM)'s license be modified to specify Whiting, Iowa, as its new community of license. Second, Sunrise proposed the allotment of Channel 268A at Underwood, Iowa, as the community's first local aural transmission service (RM-9834).² Petitioner filed comments in support of the Hinton proposal reaffirming its intention to apply for Channel 267A, if allotted. Sunrise affirmed its intention to apply for Channel 267C2 at Whiting and Channel 268A at Underwood, if allotted. Petitioner subsequently filed a request for withdrawal of the Hinton, Iowa petition, and Sunrise filed a certification in support of the withdrawal.³ On September 11, 2000, Sunrise and Waitt Radio, Inc. ("Waitt"), assignee of Station KISP(FM), filed letters requesting the withdrawal of the proposal to allot Channel 268A at Underwood, Iowa.⁴

¹ The communities of Whiting and Underwood, Iowa, and Blair, Nebraska, have been added to the caption.

² The counterproposal was placed on Public Notice on March 16, 2000, Report No. 2396 (RM-9834).

³ Victor A. Michael, Jr., President of Mountain West Broadcasting ("MWB"), certifies that neither MWB nor its principals has received or will receive any money or other consideration in exchange for the withdrawal of its Hinton, Iowa proposal.

⁴ On May 25, 2000, Sunrise Broadcasting of Nebraska, Inc. and Waitt Radio, Inc. filed an application (File No. BALH-20000525AAW) to assign Station WISP(FM)'s license from Sunrise to Waitt. The assignment was granted on July 17, 2000. The parties advise that they are prepared to consummate the assignment immediately after the grant of the instant rule making proposal.

In compliance with Section 1.420(j), both Sunrise and Waitt certify that neither has received or will receive any money or other consideration for the dismissal of the Underwood, Iowa proposal.

2. In support of its proposal, Sunrise states that Whiting is an incorporated community located in Monona County, Iowa. Whiting has a 1990 U.S. Census population of 678 persons. It has its own post office and zip code (51063). Whiting has two schools (elementary and senior high), a public library, three churches (Church of Christ, the Congregational Church, and Jehovah's Witnesses). There is also a bank (Sloan State Bank), and a variety of other local businesses.

3. The proposed reallocation was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community").

4. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change Community, supra. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.⁵ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

5. Generally, conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, supra. However, since petitioner requested that its proposal for the allotment of Channel 267A at Hinton, Iowa be withdrawn, a comparison is no longer necessary. Therefore, we believe the public interest would be served by substituting Channel 267C2 at Blair, reallocating Channel 267C2 from Blair, Nebraska to Whiting, Iowa, and modifying Station KISP(FM)'s license accordingly. In making this analysis, Whiting would receive its first local aural transmission service, triggering priority (3), and expand its service area. The reallocation would leave at Blair (population 6,860) a construction permit for Channel 247C3 (File No. BPH-19970724MO), and Station KDCV-FM, Channel 216D, a noncommercial educational station (six watts).

6. We recognize that the reallocation of Channel 268C3 at Whiting would create a loss of service to 91,795 persons and new service to 149,966 persons, with a net gain of 58,171 persons. While we are concerned by the substantial number of persons losing service, we note that the loss area would continue to receive at least five reception services and is considered to be well-served. However, the gain area would receive at least four reception services, with a population of 278

⁵The 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 given to priorities (2) and (3).]

persons receiving a fifth service encompassing 87 square kilometers (33.6 square miles). Moreover, since the 70 dBu signal for the reallocation of Channel 267C2 at Whiting would cover less than 50% of the Sioux City, Iowa Urbanized Area, a Tuck analysis is not applicable.⁶

7. Our action in approving the reallocation and change of community license of Station KISP(FM), Channel 267C2 from Blair, Nebraska to Whiting, Iowa, is premised upon the activation of Channel 247C3 at Blair to prevent the removal of the sole local service in Blair. While noncommercial educational Station KDCV-FM is on the air and licensed to Blair, Nebraska, we will not consider it as an “existing service” for change of community purposes because it is a low-power, secondary service that is subject to interference and displacement. See e.g., Section 73.512(d). Accordingly, consistent with precedent and the agreement of proponent, we will condition the grant of an authorization to operate on Channel 267C2 at Whiting upon the activation of Channel 247C3 at Blair and the grant of program test authority.

Technical Summary

8. An engineering analysis has determined that Channel 267C2 can be allotted to Whiting in compliance with the Commission’s minimum distance separation requirements with a site restriction of 8.4 kilometers (11.2 miles) northeast at Station KISP(FM)’s requested site.⁷ In accordance with Section 1.420(i), we will modify Station KISP(FM)’s license to specify operation on Channel 267C2 at Whiting, Iowa, as its new community of license.

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 16, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Blair, Nebraska	247C3
Whiting, Iowa	267C2

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Sunrise Broadcasting of Nebraska, Inc. or Waitt Radio, Inc., for Station KISP(FM), IS MODIFIED to specify operation on Channel 267C2 at Whiting, Iowa, subject to the following conditions:

⁶ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁷ The coordinates for Channel 267C2 at Whiting are 42-16-20 North Latitude and 96-02-27 West Longitude.

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620, provided that Channel 247C3 at Blair, Nebraska is activated and the station is on the air broadcasting.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Sunrise Broadcasting of Nebraska, Inc. or Waitt Radio, Inc., licensee of Station KISP(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

12. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Lawrence Bernstein, Esq.
1818 N Street, N.W., Suite 700
Washington, D.C. 20036
(Counsel for Waitt Radio, Inc.)

13. Accordingly, IT IS ORDERED, That the petition for rule making filed by Mountain West Broadcasting to allot Channel 267A to Hinton, Iowa (RM-9532), IS DISMISSED.

14. Accordingly, IT IS ORDERED, That the proposal filed by Sunrise Broadcasting of Nebraska, Inc., to allot Channel 268A at Underwood, Iowa, IS DISMISSED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau