

**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. 02-58
FM Broadcast Stations.)	RM-10415
(Shafter and Buttonwillow, California))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 13, 2002

Released: November 15, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding.¹ In response to the *Notice*, Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”) filed a Counterproposal and Comments. American General Media of Texas, Inc. (“American Media”) filed Comments, a Motion to Dismiss and Reply Comments. Clear Channel filed an Opposition to Motion to Dismiss, Reply Comments and Further Reply Comments. American Media filed a Motion for Leave to File Supplement and Supplement to Comments. Clear Channel filed a Response to the American Media Supplement. For the reasons discussed below, we are substituting Channel 226A for Channel 282A at Shafter, California, and are modifying the Station KRFR (formerly Station KCOO) license to specify operation on Channel 226A. In addition, we are allotting Channel 265A to Buttonwillow, California.²

Background

2. At the request of American Media, licensee of Station KRFR, Channel 282A, Shafter, California, the *Notice* proposed the substitution of Channel 226A for Channel 282A at Shafter, and modification of the Station KRFR license to specify operation on Channel 226A. In its Petition for Rule Making, American Media stated that it currently operates on a tower owned by Tri-Caballero, Inc. and the owner of the land, Affentrager and Sons Dairy Farm, Inc., has instituted proceedings to seize and dismantle the tower due to nonpayment of lease payments. American Media also documented its unsuccessful efforts to secure an alternate transmitter site for continued operation on Channel 282A. American Media then located an existing tower which would enable Station KRFR to continue to serve Shafter. However, at this site, Station KRFR operation on Channel 282A would not comply with the

¹ *Shafter*, California, 17 FCC Rcd 7205 (Med. Bur. 2002)

² In a separate *Notice of Proposed Rule Making* in MB Docket No. 02-208, we proposed, at the request of Dangerous Broadcasting, L.P. II, the allotment of Channel 265A to Buttonwillow, California. 17 FCC Rcd 14701 (Med. Bur. 2002). Subsequently, Dangerous Broadcasting withdrew its request and the proceeding was terminated. DA 02-3069 (released November 8, 2002). As such, Channel 265A, as originally advanced by Dangerous Broadcasting, is now available as an alternate channel in this proceeding.

minimum separation requirements set forth in Section 73.207(b) of the Commission's Rules. On the other hand, Channel 226A can be used at this transmitter site. For this reason, American Media proposed the substitution of Channel 226A for Channel 282A at Shafter.

3. In response to the *Notice*, Clear Channel filed a Counterproposal and Comments proposing the allotment of Channel 224A to Buttonwillow, California, as a first local service. American Media then filed a Motion to Dismiss directed to that Counterproposal. In its Motion to Dismiss, American Media states that the *Notice* in this proceeding, as set forth in the Federal Register and released to the public, set forth a June 10, 2002, comment date by which counterproposals must be filed.³ In this instance, Clear Channel filed its Counterproposal on June 14, 2002.

4. In its Opposition to Motion to Dismiss, Clear Channel notes that all three electronic versions of the *Notice* set forth in the official Commission web site contain a June 14, 2002, comment date. As such, the comment date in this proceeding was "ambiguous" and it would be contrary to "fundamental fairness and the public interest" to dismiss its Counterproposal without any consideration of its merits.

5. We will not dismiss the Clear Channel Counterproposal. Clear Channel did not ascertain the comment date as set forth in both the Federal Register and the copy released to the public. While this does not represent the degree of diligence that we normally expect from parties in a rulemaking proceeding, the fact remains that a later comment date was set forth on the Commission web site. In view of these circumstances, we did not provide the public with clear and unambiguous notice of the comment date.⁴

6. In its Reply Comments and Further Reply Comments, Clear Channel identified an available existing tower from which Station KRFR could continue operation on Channel 282A. In its Supplement, American Media noted that operation from this site would result in 423,743 fewer persons being served by Station KRFR. In view of the alternate channel for Buttonwillow, we do not see any public interest benefit in requiring Station KRFR to relocate to this site merely to continue operation on Channel 282A.

7. We believe that the public interest would be served by allotting Channel 226A to Shafter, California, and permitting Station KRFR to modify its license to specify operation on Channel 226A. This would permit Station KRFR to continue operation. A staff engineering review has determined that the proposed Channel 226A allotment complies with the minimum separation requirements set forth in Section 73.207(b) of the Commission's Rules. In view of the availability of an alternate channel, we are also allotting Channel 265A to Buttonwillow, California, as a first local service.⁵

8. Accordingly, pursuant to authority contained 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 December 31, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

³ See Section 1.420(d) of the Rules.

⁴ See *State of Oregon v. FCC*, 102 F.2d 583 (D.C. Cir. 1996), *C.f. Sterling, Colorado*, 16 FCC Rcd 4326 (2001).

⁵ The reference coordinates for the Channel 265A allotment at Buttonwillow, California, are 35-23-56 and 119-29-52.

<u>City</u>	<u>Channel No.</u> <u>Present</u>	<u>Proposed</u>
Buttonwillow, California	----	265A
Shafter, California	249A, 282A	249A, 226A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of American General Media of Texas, Inc. for Station KRFR, Channel 282A, Shafter, California, IS MODIFIED, to specify operation on Channel 226A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. A filing window for the Channel 265A allotment at Buttonwillow, California, 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*.

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

12. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau