

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-164
Table of Allotments,)	RM-10548
FM Broadcast Stations.)	
(Susanville, Quincy, and Corning, California))	

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: April 30, 2004

Released: May 4, 2004

Comment Date: June 25, 2004

Reply Comment Date: July 12, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Rule Making filed by Corey J. McCaslin ("Petitioner"), proposing the allotment of Channel 262A to Susanville, California, as its fourth FM broadcast aural transmission service.¹ Petitioner states that he will file an application for Channel 262A at Susanville, if allotted.

2. In order to accommodate the allotment of Channel 262A at Susanville, Petitioner proposes the substitution of Channel 265A for Channel 262A at Quincy, California and modification of the license for Station KHGQ(FM) at its current transmitter site.² Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commissions' Rules.³ Therefore, we will issued an *Order to Show Cause* to Keily Miller, licensee of Station KHGQ(FM), Quincy, California, to show cause why its license should not be modified as proposed. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred.⁴ Petitioner has stated its willingness to reimburse the licensee of Station KHGQ(FM) for reasonable costs associated with changing to Channel 265A, should he become the ultimate permittee of Channel 262A at Susanville.

¹ Stations KSUE(AM), KJDX(FM), KHJQ(FM) and vacant Channel 222C2 are currently assigned to Susanville.

² The reference coordinates for Channel 265A at Quincy are 39-56-15 NL and 120-56-49 WL.

³ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

⁴ See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

3. Additionally, to accommodate the allotment of Channel 265A at Quincy, Petitioner proposes the downgrade of Station KTHU(FM), Channel 264C1, Corning, California to Channel 264B. The license of Station KTHU(FM) was modified to specify operation on Channel 264C1 in lieu of Channel 264B at Corning.⁵ Subsequently, Station KTHU(FM) was granted a construction permit to specify operation on Channel 264C1 in lieu of Channel 264B, which expired in 1996.⁶ Therefore, we shall proposed to downgrade the channel of Station KTHU(FM) to Channel 264B at its current license site because Station KTHU(FM) currently holds a license for Channel 264B at Corning and the construction permit for Channel 264C1 has expired.⁷ In this regard, we find that further protection to the Channel 264C1 allotment at Corning could result in an unwarranted preclusionary impact when introducing additional services to communities in California.⁸ In any event, this proposal would conform the FM Table of Allotments to reflect the current license of Station KTHU(FM), Channel 264B, Corning, California.

4. The proposal to allot Channel 262A at Susanville warrants consideration since it could provide an additional FM broadcast service to that community. A staff engineering analysis indicates that Channel 262A can be allotted to Susanville consistent with the minimum distance separation requirements of the Commission's Rules using the city reference coordinates.⁹

5. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Corning, California	264C1	264B
Quincy, California	240A, 262A	240A, 265A
Susanville, California	222C2, 227C, 242C3	222C2, 227C, 242C3, 262A

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Keily Miller, licensee of Station KHGQ(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 265A in lieu of Channel 262A at Quincy, California.

7. Pursuant to Section 1.87 of the Commission's Rules, Keily Miller, may, no later than June 25, 2004, file a written statement showing with particularity why its respective license (File No. BLH-20010802ABH) should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Keily Miller to furnish additional information. If Keily Miller raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written

⁵ See *Corning, California*, 8 FCC Rcd 5149 (1993).

⁶ See BPH-19940426IA. See also, *Letter to Phoenix Broadcasting, Inc.*, 1800B3-JDB (MMB Aug. 6, 1996).

⁷ The license coordinates for Channel 264B at Corning are 39-53-17 NL and 122-37-38 WL. See BMLH-19930310KE. To date, Results Radio Licensee, LLC, licensee of Station KTHU has not filed another application implementing the allotment of Channel 264C1 at Corning.

⁸ See *Archer City, Texas*, 18 FCC Rcd 15532 (MB 2003).

⁹ The reference coordinates for Channel 262A at Susanville are 40-24-59 NL and 120-39-07 WL.

statement is filed by the date referred to above, Keily Miller will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

Keily Miller
Licensee of Station KHGQ(FM)
250 W. Nopah Vista Avenue
Pahrump, NV 89060

John G. Holland, Esq.
Attorney for Keily Miller
Latham & Watkins
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

Jack W. Fritz II, President
Licensee of Station KTHU(FM)
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Santa Rosa, California 95401

William H. Fitz, Esq.
Attorney for Results Radio Licensee, LLC
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-2401

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 25, 2004, and reply comments on or before July 12, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Corey J. McCaslin
P.O. Box 7612
Chico, CA 95927

11. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹⁰

13. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

¹⁰ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to 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 PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.