

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 02-331
Table of Allotments,)	RM-10589
FM Broadcast Stations.)	
(Milford, Utah))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 8, 2004

Released: June 10, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making*¹, issued at the request of Larry Jackson (“Petitioner”) proposing the allotment of Channel 288C2 at Milford, Utah, as its first local service. Petitioner filed no comments in response to the *Notice*. Craig Morris (“Morris”) filed a counterproposal. Sky Media, LLC (“Sky Media”), licensee of FM Station KPCK, (formerly Station KPUP), Channel 266C1, Amargosa Valley, Nevada filed reply comments. Morris filed reply comments. No other comments or counterproposals were received in response to the *Notice*.

2. Morris filed a counterproposal proposing the allotment of Channel 289C3 at Enterprise, Utah, as its first local service, which is mutually exclusive with the *Notice*’s proposal to allot Channel 288C2 at Milford, Utah. To accommodate this proposed allotment at Enterprise, Morris requests the substitution of Station KOAS(FM), Channel 289C, Dolan Springs, Arizona for Channel 288C and modification of Station KOAS(FM) license accordingly; and the substitution of Channel 282C2 for Channel 288C2 at Milford, Utah. The proposed substitution at Dolan Springs requires the substitution of Channel 292C3 for vacant Channel 258A at Cal-Nev-Ari, Nevada; and the substitution of Channel 292C3 for proposed Channel 285C3 at Peach Springs, Arizona.² To accommodate the substitution at Cal-Nev-Ari, Morris further proposes the substitution of Station KSNE-FM, Channel 293C, Las Vegas, Nevada for Channel 294C and modification of Station KSNE-FM license accordingly, which requires the substitution of Channel 272C1 for vacant Channel 295C1 at Overton, Nevada. Moreover, the proposed substitution at Overton requires the substitution of Station KJJJ(FM), Channel 272C, Pahrump, Nevada for Channel 290C and modification of Station KJJJ(FM) license accordingly; and the substitution of Channel 294C2 for proposed Channel 272C2 at Parowan, Utah.³ Lastly, the substitution at Pahrump requires the substitution of Channel 296C1 for proposed Channel 291C1 at Amargosa Valley, Nevada,⁴ which requires the substitution of Channel 272A for vacant Channel 291A at Tecopa, California. In its reply comments, Morris proposes the allotment of Channel 272C at Lake Havasu City at city reference coordinates since Steven M. Greeley, licensee of

¹ See *Milford, Utah*, 17 FCC Rcd 21161 (MB 2002).

² Channel 285C3 at Peach Springs is a proposed channel in MM Docket No. 02-12. See *Ask Fork, Arizona et al.* 18 FCC Rcd 24706 (MB 2003), *recon pending*.

³ See *Ketchum, Utah et al.* 19 FCC Rcd 292 (MB 2004).

⁴ Channel 291C1 at Amargosa Valley is a proposed channel in MM Docket No. 01-135, which is currently pending.

Station KJJJ(FM), Channel 272C2, Lake Havasu City, Arizona filed a petition for rule making requesting the substitution of Channel 272C for Channel 272C2 at Lake Havasu City, reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, and modification of the license of Station KJJJ(FM) accordingly.

3. Sky Media asserts that Morris' counterproposal should be dismissed because it suffers from multiple deficiencies. First, the counterproposal requests channel changes to three docketed rulemaking proceedings, in which one is currently pending. As such, Sky Media states that these proposed channel changes are in essence counterproposals in each of the separate proceedings, and are considered late-filed since it is well-established that a counterproposal must be filed on or before the comment date in the proceeding with which it conflicts.⁵ Sky Media alleges that a final decision must be made before Morris can propose these required channel changes because it is inefficient, unfair, and contrary to the public interest to tie up spectrum space, potentially for years that could otherwise be used by other rulemaking proponents or applicants.⁶ Sky Media recites that a counterproposal should be capable of being effectuated when it is filed.⁷

4. Second, Sky Media argues that the Commission does not accept rulemaking proposals that involve more than two involuntary changes pursuant to its *Columbus, Nebraska* policy.⁸ In this instance, Sky Media contends that the counterproposal lacks consent from the licensees of Station KOAS(FM) and KSNE-FM; and FM Station KPKK for the proposed substitution at Amargosa Valley and NPR Phoenix, LLC for the proposed substitution at Peach Springs. Sky Media affirms its support for the proposal in MM Docket 01-135 that requests the allotment of Channel 291C1 to Amargosa Valley, however, it opposes the proposed substitution of Channel 296C1 because of the lack of available transmitter sites for this channel.

5. Sky Media further contends that the counterproposal requests an impermissible nonadjacent community of license channel for Station KJJJ(FM) because the proposed substitution is not mutually exclusive with its licensed site, which violates § 1.420(i) of the Commission's rules. In this regard, Sky Media states that the provisions of § 1.420(i) permit a change in community of license in the context of a rulemaking proceeding in situations to which the new allotment would be mutually exclusive with the existing allotments.⁹ Sky Media also notes that the counterproposal proposes the substitution of Channel 290C for Channel 272C at Pahrump, Nevada for Station KJJJ(FM), which is currently licensed to the community of Lake Havasu City, Arizona, not Pahrump, Nevada.¹⁰ In sum, Sky Media states that the

⁵ See *Lakeview, Arkansas*, 11 FCC Rcd 9895 (MMB 1996); *Barnwell, South Carolina, et al.*, 16 FCC Rcd 17860 (MMB 2001); and *Wellington, Texas*, 14 FCC Rcd 104 (MMB 1999).

⁶ See *Winslow, Arizona, et al.*, 16 FCC Rcd 9551 (MMB 2001) (contingent requests unreasonably clutter the Commission's data base and may preclude acceptance of otherwise viable requests).

⁷ See *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181 (MMB 1997); and *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090 (MMB 1997).

⁸ See *Columbus, Nebraska*, 59 R.R.2d 1185 (MMB 1986); *Castle Rock, Colorado, et al.*, 7 FCC Rcd 7668 (MMB 1992), *recon. denied*, 8 FCC Rcd 4475 (MMB 1993).

⁹ See 47 C.F.R. § 1.420(i); and *Bridgeport, Texas, et al.*, 16 FCC Rcd 3637 (MMB 2000).

¹⁰ As noted, a petition for rulemaking was filed prior to the filing of the counterproposal requesting the substitution of Station KJJJ(FM), Channel 272C2, Lake Havasu City, Arizona for Channel 272C, the reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, and modification of Station KJJJ(FM)'s license accordingly. The reallocation of Channel 272C to Pahrump conflicts Morris' counterproposal.

counterproposal is defective and must be dismissed as untimely because of the strict standards for counterproposals.¹¹

6. **Discussion.** We find that Morris' counterproposal is technically defective. Specifically, a staff analysis reveals that the proposed substitution of Channel 290C for Channel 272C at Pahrump, Nevada is in violation of § 73.315(a) of the Commission's rules because the proposed 70 dbu contour would not provide city grade coverage of one hundred percent to the community of Pahrump.¹² The distance from the transmitter site to the furthest point of the community boundaries is 77 kilometers whereas the maximum distance for a Class C facility is 67.7 kilometers. Moreover, the counterproposal requests the substitution of Channel 290C for Channel 272C at Pahrump for Station KJJJ(FM), even though the station is licensed on Channel 272C2, and has an outstanding construction permit on Channel 272B at Lake Havasu City, Arizona.¹³ We note that a counterproposal must be technically correct and substantially complete at the time it is filed.¹⁴

7. Sky Media asserts in its comments that the counterproposal requests an impermissible nonadjacent community of license channel for Station KJJJ(FM) because the proposed substitution of Channel 290C is not mutually exclusive with the licensed site of Station KJJJ(FM). We disagree. Because the proposed Channel 290C substitution is not mutually exclusive with Channel 272C2 or Channel 272B at Lake Havasu City, it would be subject to competing expressions of interest.¹⁵ The change of community procedure is limited to situations in which the new allotment would be mutually exclusive with the existing allotment and will not apply to nonadjacent upgrades.¹⁶

7. We find, however, that the counterproposal violates our policy set forth in *Columbus, Nebraska* because it proposes more than two involuntary channel changes for licensed stations.¹⁷ Specifically, the counterproposal proposed channel substitutions without the consent of the licensees for Station KOAS(FM), Channel 259C, Dolan Springs, Arizona, Station KSNE-FM, Channel 293C, Las Vegas, Nevada, and FM Station KPKK, 266C1, Amargosa Valley, Nevada.

8. Further, we find that the counterproposal is untimely and unacceptable as filed because the counterproposal requests channel substitutions for three docketed proceedings, in which one is currently pending. Particularly, the counterproposal requests the substitution of Channel 292C3 for proposed Channel 285C3 at Peach Springs, Arizona, MM Docket No. 02-12; Channel 294C2 for proposed Channel 272C2 at Parawan, Utah, MM Docket No. 02-14; and Channel 296C1 for proposed Channel 291C2 at Amargosa Valley, Nevada, MM Docket No. 01-135. A counterproposal must be capable of being

¹¹ See *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090 (MMB 1997) (counterproposals must be technically correct and substantially complete at the time they are filed).

¹² The proposed reference coordinates for Channel 290C at Pahrump are 35-57-57 NL and 115-30-03 WL.

¹³ As noted, Steven M. Greeley filed a petition for rule making requesting the substitution of Station KJJJ(FM), Channel 272C2, Lake Havasu City, Arizona for Channel 272C, the reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, as its fourth local service and the modification of Station KJJJ(FM) license accordingly.

¹⁴ *Id* note 11.

¹⁵ See 47 C.F.R. § 1.420(i)(only mutually exclusive city of license modifications are not subject to competing expressions of interest) The counterproposal is not technically defective on this basis.

¹⁶ See *Amendment of the Commission's Rules Regarding Modification of FM TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989).

¹⁷ *Id* note 8.

effectuated when it is filed.¹⁸ As such, there must be an effective decision allotting these requested channels in the relevant proceeding before any channel changes are proposed.¹⁹ In this case, Morris' counterproposal is considered untimely and unacceptable because the proposed channel substitutions for Channel 285C3 at Peach Springs, Channel 272C2 at Parowan and Channel 291C1 at Amargosa Valley had to be advanced by the initial comment date in these separate proceedings to be considered timely and acceptable.²⁰

9. Morris later requested to amend its counterproposal by proposing the allotment of Channel 272C at Lake Havasu City using the city reference coordinates because the licensee of Station KJJJ(FM) proposed to change its community of license from Lake Havasu City to Pahrump. This request violates our policy set forth in *Taccoa* since amendments to counterproposal are impermissible unless an "unforeseen circumstance" occurred.²¹ Morris cites to no "unforeseen circumstance." Accordingly, for the reasons discussed above the counterproposal filed by Morris is hereby dismissed.

10. Two petitions for rulemaking were placed on *Public Notice* for consideration as counterproposals in this proceeding because of the conflict with the instant counterproposal.²² The petitions for rulemaking were filed by Steven M. Greeley, proposing the reallocation and change of community of license for Station KJJJ(FM), from Channel 272C2, Lake Havasu City, Arizona, to Channel 272C, the reallocation of Channel 272C to Pahrump, Nevada, as its third local service; and SSR Communications Inc., requesting the allotment of Channel 272C3 at Pahrump, Nevada. We find it unnecessary to consider these two proposals in the context of this proceeding because the counterproposal is considered defective and neither proposal conflicts with the *Notice's* proposal to allot Channel 288C2 to Milford, Utah. As such, we will separately issue a *Notice of Proposed Rule Making* setting forth both proposals since they are mutually exclusive.

11. The Petitioner did not file comments expressing a continuing interest in the allotment of Channel 288C2 to Milford, Utah. The Appendix to the *Notice* stated that a showing of continuing interest is required before a channel will be allotted. As such, it is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest. Therefore, we will dismiss the Petition for Rule Making since comments were not received from the Petitioner supporting the allotment of Channel 288C2 to Milford.

12. IT IS ORDERED, That the Petition for Rulemaking filed by Larry Jackson proposing the allotment of Channel 288C2 to Milford, Utah IS DISMISSED.

13. IT IS FURTHER ORDERED, That the counterproposal filed by Craig Morris IS DISMISSED.

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

¹⁸ *Id* note 7.

¹⁹ See *Auburn et al.* 18 FCC Rcd 10333 (MB 2003).

²⁰ See 47 C.F.R. § 1.420(d); see also *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

²¹ *Taccoa, Sugar Hill and Lawrenceville, Georgia*, 16 FCC Rcd 21191 (MMB 2001).

²² See *Public Notice*, Report No. 2646, released February 13, 2004.

15. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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