

**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. 02-14
FM Broadcast Stations.)	RM-10358
(Ketchum, Jerome and Rupert, Idaho,)	RM-10764
and Coalville, Naples, Huntsville, South Jordan,)	
Tooele, Wellington, Castle Dale, Salina,)	
Parowan and Payson, Utah.)	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 14, 2004

Released: January 16, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* proposing the allotment of Channel 224A to Ketchum, Idaho.¹ Millcreek Broadcasting, L.L.C., Community Wireless of Park City, Inc., and George S. Flinn, Jr. (“Joint Parties”) jointly filed a Counterproposal, a Supplement and Reply Comments. Alpine Broadcasting Limited Partnership (“Alpine Broadcasting”), Best Ski Country Radio (“Best Ski”), Sierra Grande Broadcasting (“Sierra Grande”) and Intelliquest Media Corporation (“Intelliquest Media”) filed Comments. For the reasons discussed below, we are modifying each of the authorizations of Station KUUU, Station KCUA and Station KPED to specify a new community of license along with an upgraded channel. In order to accommodate these modifications, we are substituting channels at Rupert, Idaho, and Payson, Wellington and Castle Dale, Utah.

Background

2. At the request of Best Ski, the *Notice* in this proceeding proposed the allotment of Channel 224A to Ketchum, Idaho, as a second local service. In response to the *Notice*, the Joint Parties filed a Counterproposal involving interrelated channel substitutions at thirteen communities in Idaho and Utah. Specifically, the Joint Parties proposed the substitution of Channel 223C for Channel 221C3 at Tooele, Utah, reallocation of Channel 223C to South Jordan, Utah, and modification of the Station KUUU license to specify operation on Channel 223C at South Jordan. In order to accommodate this reallocation and upgrade, the Joint Parties proposed three channel substitutions. First, the Joint Parties proposed the substitution of Channel 275C0 for Channel 223C at Rupert, Idaho, and modification of the Station KKMV license to specify operation on Channel 275C0. Second, the Joint Parties proposed the substitution of Channel 221A for Channel 222A at Payson, Utah, and modification of the license of Station KTCE to specify operation on Channel 221A at Payson. To this end, we issued an *Order to Show Cause* directed to Moenkopi Communications, Inc., licensee of Station KTCE, Channel 222A, Payson,

¹ *Ketchum, Idaho*, 17 FCC Rcd 1660 (MB 2002).

Utah.² Third, the Joint Parties proposed the substitution of Channel 223C for Channel 223C3 at Coalville, Utah, reallocation of Channel 223C to Naples, Utah, and modification of the Station KCUA license to specify operation on Channel 223C at Naples.

3. To provide a replacement service at Coalville, the Joint Parties also proposed the substitution of Channel 276C for Channel 276C3 at Huntsville, Utah, reallocation of Channel 276C to Coalville, and modification of the Station KPED construction permit to specify operation on Channel 276C at Coalville. In order to reallocate Channel 276C to Coalville, the Joint Parties proposed alternate Channel 300C at Salina, Utah, in lieu of Channel 276C then being proposed in MM Docket 02-166.³

Discussion

4. We are substituting Channel 233C for Channel 221C3 at Tooele, Utah, reallocating Channel 223C to South Jordan, Utah, and are modifying the Station KUUU license to specify operation on Channel 223C at South Jordan.⁴ This will result in a preferential arrangement of allotments as required by *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*.⁵ In reaching this determination, we compared the existing versus the proposed arrangement of allotments using the FM priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁶ In this instance, the reallocation will provide a first local service to South Jordan, with a 2000 U.S. Census population of 29,437 persons, while Tooele, with a 2000 U.S. Census population of provide 22,502 persons, will continue to receive local service from Station KIQN.⁷ This will also result in a net gain in service to 1,130,525 persons, and the area losing service will continue to be served by five or more services.⁸

5. We recognize that South Jordan is within the Salt Lake City Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized

² In order to accommodate a Channel 221A for Channel 222A substitution at Payson, the Joint Parties also propose channel substitutions at two vacant allotments and a change in transmitter site. Specifically, the Joint Parties propose the substitution of Channel 237C3 for vacant Channel 221C3 at Wellington, Utah, the substitution of Channel 271C3 for vacant Channel 237C3 at Castle Dale, Utah, and the relocation of the Station KPCW, Channel 220A, Park City, Utah, transmitter site.

³ In the *Report and Order* in MB Docket No. 02-166, we allotted Channel 233C at Salina, Utah. DA 03-3916 (Rel. Dec. 16, 2003). As such, it will not be necessary to consider a Channel 300C allotment at Salina or the originally proposed substitution of Channel 272C2 for Channel 300C2 at Parowan, Utah, in the context of this proceeding.

⁴ The reference coordinates for the Channel 223C allotment at South Jordan, Utah, are 40-39-35 and 112-12-05.

⁵ 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁶ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁷ In its Comments, Intelliquist Media Corporation notes that Station KIQN is a daytime-only AM station. In this regard, the Commission considers both daytime and fulltime AM stations as local transmission services. See *Community of License*, 5 FCC Rcd at 7097.

⁸ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

Area. In making such a determination, we apply existing precedents.⁹ In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community.

6. In this situation, South Jordan, with a 2000 U.S. Census population of 29,437 persons, is entitled to consideration as a first local service. This population total is substantial, in excess of 16% of the 2000 U.S. Census population of Salt Lake City of 181,743 persons, and supports consideration as a first local service.¹⁰ With respect to the fact that the proposed facility will cover 87% of the Salt Lake City Urbanized Area, we note that as a Class C2 facility, Station KUUU will invariably cover a large area and this coverage does not preclude favorable consideration as a first local service. In any event, the Commission has stated that these factors have less significance than evidence of independence.¹¹

7. In its Comments, Intelliquist Media contends that South Jordan does not have the “requisite degree of independence sufficient to warrant” a reallocation to an Urbanized Area. We disagree. Consistent with the factors set forth in *Faye and Richard Tuck*, we conclude that South Jordan is not dependent upon the Salt Lake City Urbanized Area for its existence and is entitled to consideration as a first local service. South Jordan is an incorporated community governed by a mayor and city council with a 2002 fiscal budget of \$25,000,000. It has its own municipal court, police and fire departments, public works and recreation departments. In addition to its own civic and religious organizations, South Jordan has its own commercial establishments, banks and health care facilities. The Jordan School District operates five elementary schools, two middle schools and two high schools in South Jordan. Finally, South Jordan has its own zip code, post office and local businesses are able to advertise in the South Valley Journal.

8. In order to accommodate Channel 223C2 at South Jordan, we are substituting Channel 223C2 for Channel 223C3 at Coalville, Utah, reallocating Channel 223C2 to Naples, Utah, and are modifying the Station KCUA license to specify operation on Channel 223C2 at Naples.¹² Community Wireless, licensee of Station KCUA and one of the Joint Parties, has agreed to this modification of its license. This will provide a first local service for Naples. Naples is an incorporated community with a 2000 U.S. Census population of 1,300 persons. Station KCUA will not provide a 60 dBu service to any Urbanized Area. In order to replace the sole local service at Coalville, we are substituting Channel 276C for Channel 276C3 at Huntsville, Utah, reallocating Channel 276C to Coalville, and are modifying the Station KPED construction permit to specify operation on Channel 276C at Coalville.¹³ George S. Flinn, Jr., permittee of Station KPED and one of the Joint Parties, has agreed to this modification of his construction permit. Station KPED has not commenced operation in Huntsville. As such, we would not be removing the sole local operating service from Huntsville. In this regard, the reallocation to Coalville will result in a net gain in service to 1,416,998 persons while the area losing service will continue to receive service from more than five aural services.

9. Originally, the Joint Parties proposed the substitution of Channel 275C0 for Channel 223C at Rupert, Idaho, in order to accommodate Channel 223C2 at South Jordan. As set forth in the Joint Parties revised Counterproposal, we are substituting Channel 291C0 for Channel 223C at Rupert, and are

⁹ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

¹⁰ *C.f. Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996); *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (MMB 1992).

¹¹ *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

¹² The reference coordinates for the Channel 223C2 allotment at Naples, Utah, are 40-35-08 and 109-42-08.

¹³ The reference coordinates for the Channel 276C allotment at Coalville, Utah, are 40-55-46 and 111-00-26.

modifying the Station KKMV license to specify operation on Channel 291C0.¹⁴ Tri-Market Radio Broadcasters, Inc., licensee of Station KKMV has agreed to the modification of its license to specify operation on Channel 291C0 at a new reference site.¹⁵ Millcreek Broadcasting, one of the Joint Parties, has agreed to reimburse Tri-Market Radio Broadcasters for the expenses incurred in effectuating this modification.

Payson, Utah

10. The Channel 223C2 reallocation at South Jordan also requires the substitution of Channel 221A for Channel 222A at Payson, Utah, and modification of the Station KTCE license to specify operation on Channel 221A. To this end, we issued an *Order to Show Cause* directed to Moenkopi Communications, Inc., licensee of Station KTCE, proposing the modification of the Station KTCE license to specify operation on Channel 221A.¹⁶ In response to the *Order to Show Cause*, Moenkopi Communications, Inc. consented to the proposed channel substitution. As proposed, we will modify the Station KTCE license to specify operation on Channel 221A.¹⁷ Millcreek Broadcasting has agreed to reimburse Moenkopi Communications, Inc. for the costs of changing its channel.

11. To accommodate Channel 221A at Payson, the Joint Parties originally proposed changing the Station KPCW transmitter site. Subsequently, we granted a construction permit changing the Station KPCW transmitter site and Station KPCW is now licensed at a site that would accommodate a Channel 221A allotment at Payson. The Channel 221A substitution at Payson requires channel substitutions at two vacant allotments. As proposed by the Joint Parties, we are substituting Channel 237C3 for Channel 221C3 at Wellington, Utah,¹⁸ and Channel 271C3 for Channel 237C3 at Castle Dale, Utah.¹⁹

Ketchum, Idaho

12. We are denying the underlying proposal for a Channel 224A allotment at Ketchum, Idaho. As noted by Alpine Broadcasting Limited Partnership, the proposed transmitter site is located within the Sawtooth National Forest. According to the District Ranger, there is no electric power at this site or any roads leading to this site. Moreover, this site is within an inventoried roadless area and is a habitat for wintering wildlife. For these reasons, we find that there is no reasonable assurance of an available transmitter site for this allotment.²⁰

13. 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 March 1, 2004, the FM Table of Allotments, Section 73.202(b) of the Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

¹⁴ The reference coordinates for the Channel 291C0 allotment at Rupert, Idaho, are 42-23-40 and 113-42-05.

¹⁵ As a result of the Channel 291C0 substitution at Rupert, it will not be necessary to substitute Channel 224C1 for Channel 275C1 at Jerome, Idaho, as originally proposed.

¹⁶ *Ketchum, Jerome and Rupert, Idaho, and Coalville, Naples, Huntsville, South Jordan, Tooele, Wellington, Castle Dale, Salina, Parowan and Payson, Utah*, 18 FCC Rcd 23748 (MB 2003).

¹⁷ The reference coordinates for the Channel 221A allotment at Payson, Utah, are 40-03-20 and 111-49-43.

¹⁸ The reference coordinates for the Channel 237C3 allotment at Wellington, Utah, are 39-32-33 and 110-44-05.

¹⁹ The reference coordinates for the Channel 271C3 allotment at Castle Dale, Utah, are 39-12-48 and 111-01-18.

²⁰ *C.f. Grand View, Idaho*, 15 FCC Rcd 2768 (MMB 2000) (proposed allotment denied where there was no reasonable assurance of site availability on land administered by the Bureau of Land Management).

<u>Community</u>	<u>Channel No.</u>
Rupert, Idaho	291C0
Coalville, Utah	276C
Naples, Utah	223C2
Huntsville, Utah	-----
Payson, Utah	221A
South Jordan, Utah	223C2
Tooele, Utah	-----

14. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Millcreek Broadcasting, L.L.C. for Station KUUU, Channel 221C3, Tooele, Utah, IS MODIFIED to specify operation on Channel 223C2 at South Jordan, Utah, 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 a 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 Rules; and
- (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 Rules, unless the proposed facilities are categorically excluded from environmental processing.

15. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Community Wireless of Park City, Inc. for Station KCUA, Channel 223C3, Coalville, Utah, IS MODIFIED to specify operation on Channel 223C2 at Naples, Utah, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission minor change application for a 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 Rules; and
- (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 Rules, unless the proposed facilities are categorically excluded from environmental processing.

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of George S. Flinn, Jr. for Station KPED, Channel 276C3, Huntsville, Utah, IS MODIFIED to specify operation on Channel 276C at Naples, Utah, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order* the permittee shall submit to the Commission a minor change application for a 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 Rules;
- (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 Rules, unless the proposed facilities are categorically excluded from environmental processing.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Tri-Market Radio Broadcasters, Inc. for Station KKMV, Channel 223C, Rupert, Idaho, IS MODIFIED to specify operation on Channel 291C0, 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 a 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 Rules; and
- (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 Rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Moenkopi Communications, Inc. for Station KTCE, Channel 222A, Payson, Utah, IS MODIFIED to specify operation on Channel 221A, subject to the following conditions:

- (a) Nothing contained herein shall be construed to authorize any change in the authorization for Station KTCE except for the channel as described above. Any other changes, except for those specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301);
- (b) Program tests may be conducted in accordance with Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the authorization for Station KTCE except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of the commencement of program tests.

19. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in 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 rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees receiving an upgrade and/or change in community of license are required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade and/or change in community of license.

20. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:

Moenkopi Communications, Inc.
2235 North University Parkway, Suite 15
Provo, Utah 84603-0010

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau