

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-124
Table of Allotments,)	RM-10936
FM Broadcast Stations.)	RM-10937
(Dallas, Oregon))	RM-10938
)	RM-10939
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 25, 2005

Released: May 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of Northwest Community Radio Project (“Northwest Community”), Dallas, Oregon Seventh-day Adventist Church (“Dallas/Seventh-day”), Radio Bilingue, Inc. (“Radio Bilingue”) and Lifetime Ministries, Inc. (“Lifetime Ministries”), (collectively “Petitioners”). The Petitioners each filed a petition proposing the reservation of vacant Channel 252C3 at Dallas, Oregon for noncommercial educational (“NCE”) use. The Petitioners, Starboard Media Foundations, Inc., (“Starboard Media”), Oregon Law Center Farmworker Office (“Oregon Law Center”) and Legal Aid Services of Oregon (“Legal Aid Services”) filed comments.² Radio Beam, LLC, (“Radio Beam”) filed opposing comments.³ Radio Bilingue and Lifetime Ministries filed reply comments.

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“NCE Report and Order”), the Commission established revised criteria by

¹ *Dallas, Oregon*, 19 FCC Rcd 6826 (MB 2004) (“Notice”).

² Dallas/Seventh-day hand-delivered its comments to the Commission on June 4, 2004, the comment deadline in this proceeding was June 7, 2004. However, Dallas/Seventh-day addressed its comments to the Chief, Audio Division, Media Bureau, which resulted in the receipt of a bureau/office mail stamp. Thereafter, the comments were re-stamped by the Office of the Secretary on June 14, 2004 because all filings pertaining to FM allotment proceedings must be submitted to the Office of the Secretary. Any such filing is treated as filed on the date it is received by the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, Dallas/Seventh-day filing was untimely. We note that this filing was made before a recent change in the Audio Division’s standard notice of proposed rulemaking language, which emphasizes this filing requirement for all submissions in FM allocation proceedings. Accordingly, we waive the filing deadline in this instance. We note, again, that failure to follow the specified requirements will result in the treatment of a filing as filed on the date it is received in the Office of the Secretary. This processing rule will be strictly followed. See *Filing Requirements in FM Allotment Rulemaking Proceedings*, DA 05-995, released April 1, 2005 (advising filers that all filings concerning FM allotment proceedings must be submitted to the Office of the Secretary).

³ Earnest R. Hopseker, manager of Radio Beam, filed an “Addendum to Comments of Radio Beam, LLC.” stating that all statements contained in the comments of Radio Beam are true and correct to the best of his knowledge.

which a rulemaking proponent may reserve an FM allotment for NCE use.⁴ Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220) and that the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m (60 dBu) contour of the proposed station. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. Thereafter, the Commission extended the expanded criteria to existing vacant FM allotments for which a *Notice of Proposed Rule Making* had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.⁵ In a *Public Notice* released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.⁶

3. As stated in the *Notice*, the Petitioners each filed a proposal requesting the reservation of vacant Channel 252C3 at Dallas, Oregon for NCE use at reference coordinates 44-55-06 NL and 123-19-00 WL. The *Notice* provided an opportunity for an opposing party to file rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. Alternatively, a party may file comments demonstrating that the reservation proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m (60 dBu) contour of the proposed station.

4. **Comment Summary.** The Petitioners separately filed comments restating their interest in the NCE reservation of vacant Channel 252C3 at Dallas. Starboard Media filed comments supporting the Northwest Community NCE reservation proposal. Starboard Media commits to filing an application for vacant Channel 252C3 at Dallas, if reserved for NCE use. Oregon Law Center and Legal Aid Services each filed comments supporting the Radio Bilingue NCE reservation proposal.

5. Radio Beam filed comments opposing the reservation of vacant Channel 252C3 at Dallas, Oregon for NCE use because it would not provide a first and/or second NCE service to at least 10 percent of the population within the proposed 60 dBu contour. Radio Beam states that all of the Petitioners failed to include NCE Station KOAC(AM), Corvallis, Oregon, licensed to Oregon Public Broadcasting, when determining whether Channel 252C3 at Dallas would provide a first and/or second NCE service. Moreover, three of the Petitioners failed to include NCE Station KLVU(FM), Sweet Home, Oregon, licensed to Educational Media Foundation, in their analysis.⁷ Specifically, Radio Beam contends that when Stations KOAC(AM) and KLVU(FM) are considered, Channel 252C3 at Dallas would only provide a first and/or second NCE service to only .7 percent of the total population with the proposed 60 dBu contour. Moreover, Channel 252C3 at Dallas would only provide a first and/or second NCE service to 7.9 percent of the total population, if Station KOAC(AM) were excluded.

6. Radio Bilingue filed reply comments arguing that Station KLVU(FM), Channel 296C1, Sweet Water, Oregon, should not be considered because it is an NCE station operating on nonreserved Channel 296 and this Sweet Water allotment has not been reserved for NCE use.⁸ It contends that NCE

⁴ 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to Channel 6 TV station(s) and to foreign allotments.

⁵ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“NCE Second Report and Order”), 18 FCC Rcd 6691 (2003).

⁶ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, 18 FCC Rcd 19600 (MB 2003) (“Public Notice”).

⁷ See File No. BMLD-19970415KD.

⁸ Channel 296 is not reserved for noncommercial use in the FM Table of Allotments.

stations operating on nonreserved channels could be sold to commercial broadcasters. As such, their current status as NCE stations does not guarantee NCE service for the community in the future. Therefore, Radio Bilingue concludes that the Commission should not count such stations in evaluating NCE reservation showings. Additionally, Radio Bilingue argues that Radio Beam's calculations for AM NCE service take into account the impact of terrain on signal propagation, whereas the *NCE Second Report and Order* assumes uniform terrain and the use of non-directional facilities. In sum, Stations KLVU(FM) and KOAC(AM) should not be considered when determining whether an NCE station on Channel 252C3 at Dallas would meet the ten percent population criterion.

7. Lifetime Ministries filed reply comments stating that the *NCE Second Report and Order* did not mandate the inclusion NCE AM stations. As such, it contends that a petitioner is not required to consider NCE AM stations when establishing the relative need for new NCE service. It also notes that such an AM station could change to an AM commercial station by filing a license modification application. As such, there is no guarantee that Station KOAC(AM) would continue operating as a NCE AM station. Lifetime Ministries also argues that the *NCE Second Report and Order* clearly states that reservation showings must only take into account stations operating on reserved band channels.

8. **Discussion.** The *NCE Second Report and Order* set forth a methodology to use when evaluating FM allotment reservation requests. In this regard, a reservation showing must satisfy two distinct criteria. Under the first, a petitioner must establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area, such population must exceed 2,000 persons. In the *NCE Second Report and Order*, the Commission made no distinction between types of NCE stations for the purpose of calculating first and second NCE service. Accordingly, AM stations and non-reserved band FM stations with non-reserved allotments are properly included in this calculation. Therefore, we will not reserve vacant Channel 252C3 at Dallas, Oregon for NCE use. Specifically, a staff engineering analysis determines that NCE Station KOAC(AM) provides coverage to one hundred percent of the proposed service area for Channel 252C3 at Dallas, Oregon.⁹ Thus, the reservation of Channel 252C3 at Dallas would only provide a second NCE service to 9,776 persons (2.5 percent) of the total population of 397,890 persons. As such, the NCE reservation of Channel 252C3 at Dallas would not provide a first and/or second NCE service to at least ten percent of the total population with the proposed service area. Accordingly, we deny the Petitioners proposals requesting the reservation of vacant Channel 252C3 at Dallas, Oregon for NCE use.

9. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.

14. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Northwest Community Radio Project, IS DENIED.

15. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Dallas, Oregon Seventh-day Adventist Church, IS DENIED.

16. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Radio Bilingue, Inc., IS DENIED.

⁹ NCE Station KOAC(AM) provides daytime (.5 mV/m ground wave contour) and night-time (2.0 mV/m ground wave contour) coverage to the entire proposed service area of Channel 252C3 at Dallas.

17. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Lifetime Ministries, Inc., IS DENIED

18. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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