

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 05-88
Table of Allotments,)	RM-11173
FM Broadcast Stations.)	RM-11177
(San Luis Obispo and Lost Hills, California and)	
Maricopa, California)		

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 13, 2005

Released: July 15, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“Notice”),¹ which requested comments on two mutually exclusive proposals. The first proposal, filed by GTM San Luis Obispo (“GTM San Luis”), licensee of Station KLRM(FM), San Luis Obispo, California, proposing the substitution of Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallocation of Channel 245B1 from San Luis Obispo to Lost Hills, California, as its second local service, and modification of the Station KLRM(FM) license accordingly. The second proposal, filed by 105 Mountain Air, Inc. (“Mountain Air”) requesting the allotment of Channel 245A at Maricopa, California, as its second local service. GTM San Luis filed comments and Motion to Dismiss.² There were no counterproposals or additional comments received in response to this proceeding.

2. **Background.** As stated in the *Notice*, each petitioner was requested to demonstrate in its comments why their respective community should receive the requested allotment given that both proposals cannot be accommodated in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission’s Rules. The proposals are located 52.4 kilometers apart whereas the minimum distance separation requirement is 143 kilometers. A comparison between the two proposals is no longer necessary because no comments were received by Mountain Air, or any party expressing an interest in the allotment of Channel 245A at Maricopa, California, as its second local service. It is the Commission’s policy to refrain from making an allotment to a community absent a *bona fide* expression of interest. Therefore, we will not consider the allotment of Channel 245A at Maricopa.

3. GTM San Luis filed its request pursuant to Section 1.420(i) of the Commission’s rules, which permits the modification of a station’s license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.³ The proposed reallocation of Channel 245B1 at Lost Hills, California is mutually exclusive

¹ See *San Luis Obispo and Lost Hills, California and Maricopa, California*, 20 FCC Rcd 4352 (MB 2005).

² GTM San Luis filed a Motion to Dismiss requesting to dismiss the Mountain Air proposal because no supporting comments were received.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7394 (1990).

with the current authorized facilities of Station KLRM(FM), Channel 246B1, San Luis Obispo, California.

4. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.⁴ To this end, the proposed Lost Hills reallocation would provide the community with its first competitive local service, whereas the retention of Station KLRM at San Luis Obispo would attribute to a twelfth local service.⁵ As such, the reallocation proposal results in a preferential arrangement of allotments based on priority (4), other public interest matters.

5. We find that the public interest would be served by substituting Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallocating Channel 245B1 from San Luis Obispo to Lost Hills, California, as its second local service, and modifying the Station KLRM(FM) license accordingly

6. A staff engineering analysis has determined that Channel 245B1 can be reallocated to Lost Hills, California in conformity with the Commission's rules, provided there is a site restriction of 16.6 kilometers (10.3 miles) south at coordinates 35-28-00 NL and 119-41-00 WL. Moreover, the reallocation of Channel 245B1 to Lost Hills results in a gain of service to 860,383 persons. The reallocation provides 1,958 persons with a sixth service within the proposed 60 dBu contour. The reallocation covers no part of an Urbanized Area. Therefore, a *Tuck* showing is not required.⁶

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

8. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective August 29, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
San Luis Obispo, California	227B, 241B, 251B
Lost Hills, California	245B1, 289A

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁵ AM Stations KVEC, KJDJ, KYNS, and KKJL, noncommercial Stations KLVH-FM, KCBX, KCPR, and commercial FM Stations KZOZ, KSLY-FM, KLRM, and KKJG are currently license to San Luis Obispo.

⁶ *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990) ("*KFRC*").

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of GTM San Luis Obispo for Station KLRM(FM), Channel 246B1, San Luis Obispo, California, IS MODIFIED to specify operation on Channel 245B1 at Lost Hills, California, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station KLRM(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; 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 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) 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 rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, GTM San Luis Obispo, licensee of Station KLRM(FM), Channel 246B1, San Luis Obispo, California, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for Station KLRM(FM) to specify operation on Channel 245B1 at Lost Hills, California at the time its Form 301 application is submitted.

11. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by 105 Mountain Air, Inc., IS DISMISSED.

12. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau