

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

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Hemet, California) )

**MEMORANDUM OPINION AND ORDER  
(Proceeding Terminated)**

**Adopted: July 26, 2006**

**Released: July 28, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two Petitions for Reconsideration separately filed by Southern California Public Radio (“Southern California”) and Maranatha Ministries of Hemet (“Maranatha Ministries”) directed to the staff letters dated March 18, 2004, returning their Petitions for Rule Making requesting the reservation of vacant FM Channel 273A at Hemet, California for noncommercial educational (“NCE”) use.

2. **Background.** In 2002, the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use. Initially, this reservation process was limited to future allotment proceedings.<sup>1</sup> The Commission later 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*.<sup>2</sup> Under this expanded reservation standard, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220), 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, and that the population receiving a first and/or second NCE service exceeds 2,000 persons.<sup>3</sup>

3. In response to the *Public Notice*, Southern California and Maranatha Ministries each filed a petition requesting the reservation of vacant FM Channel 273A at Hemet, California for NCE use.<sup>4</sup> Both petitions were returned as unacceptable for consideration by staff letter action because the proposals failed to meet the established NCE reservation criteria. Specifically, the staff analysis determined that the proposed NCE reservation requests for vacant FM Channel 273A at Hemet, California would not provide

<sup>1</sup> In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (“*NCE Report and Order*”). Previously, the Commission would only reserve a channel in the non-reserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel, not technically precluded by domestic FM broadcast stations, could be used without causing prohibited interference to Channel 6 TV station(s) and to foreign allotments.

<sup>2</sup> *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”).

<sup>3</sup> See 47 C.F.R. § 73.202(a)(1)(ii).

<sup>4</sup> See *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, 18 FCC Rcd 19600 (MB 2003) (“*Public Notice*”).

a first or second NCE radio service to at least 10 percent of the population within the proposed service area.

4. **Petition for Reconsideration.** Southern California states that its proposal meets the revised criteria for the reservation of Channel 273A at Hemet for NCE use. Southern California asserts that the construction of an NCE station on any of the reserved band channels is precluded. To this end, no rule-compliant Class A station could be authorized at minimum facilities on any of the reserved band channels at the city reference coordinates of Hemet. Moreover, no rule-compliant Class A facility could be authorized at maximum facilities on any of the reserved band channels by utilizing the four equally spaced locations, beginning with the zero degrees azimuth, and a radius of one kilometer less than the distance to the predicted 60 dBu contour. Southern California provides a technical statement, showing that 101,142 (16 percent) of the population within the proposed station's service area would receive a first or second NCE service.

5. Maranatha Ministries states that its proposal satisfies the established guidelines for the NCE reservation of Channel 273A at Hemet. To this end, Maranatha Ministries submitted an engineering showing, demonstrating that the reservation of Channel 273A at the allotment site reference coordinates, using maximum Class A facilities, would provide a first or second NCE service to 105, 771 persons (17 percent) of the population within the proposed station's service area.

6. **Discussion.** Section 1.429 of the Commission's rules sets forth the limited provisions under which the Commission will reconsider a rulemaking action. Reconsideration is warranted only if the Petitioner cites error of fact or law, or presents new facts or changed circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action.

7. A staff engineering analysis reveals that Southern California and Maranatha Ministries used actual terrain data to plot the 60 dBu contour which it then used to calculate the 10 percent population criterion. The use of actual terrain data is not permissible at the allotment stage.<sup>5</sup> Our staff analysis determined that the NCE reservation of vacant Channel 273A at Hemet would encompass 387,128 persons within its proposed 60 dBu contour, and only 2.5 percent of this population (9,701 persons) would receive a first or second NCE service. Accordingly, the Petitions for Reconsideration are denied.

8. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

9. IT IS ORDERED, That the Petition for Reconsideration filed by Southern California Public Radio IS DENIED.

10. IT IS ORDERED, That the Petition for Reconsideration filed by Maranatha Ministries of Hemet IS DENIED.

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<sup>5</sup> A rulemaking proponent of an existing station may use actual terrain data to calculate city-grade coverage of the specified city of license if such petitioner has a reasonable assurance of the continued availability of its proposed transmitter site and has obtained FAA approval for the site. *See Woodstock and Broadway, Virginia*, Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988).

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

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

FEDERAL COMMUNICATIONS COMMISSION

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