

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-115
Table of Allotments,)	RM-10926
FM Broadcast Stations.)	
(Huntsville, Missouri))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 2, 2006

Released: August 4, 2006

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 American Family Association (“Petitioner”) proposing the reservation of vacant Channel 278C2 at Huntsville, Missouri for noncommercial educational (“NCE”) use. Petitioner and Starboard Media Foundations, Inc., (“Starboard Media”) filed comments. KIRK, L.L.C (“KIRK”) filed opposing comments. Petitioner and KIRK filed reply comments. KIRK filed a Motion for Leave to File a Reply to Reply Comments (“Motion”).

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Report and Order*”), the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.² 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, provided that such population exceeds 2,000 persons.³ Initially, this reservation process was limited to future allotment proceedings. 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*.⁴ 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*.⁵

3. As stated in the *Notice*, the Petitioner filed a proposal requesting the reservation of vacant Channel 278C2 at Huntsville, Missouri for NCE use. The *Notice* provided an opportunity for an opposing party to file rebuttal comments identifying a site at which a reserved channel could be assigned

¹ *Huntsville, Missouri*, Notice of Proposed Rule Making, 19 FCC Rcd 6826 (MB 2004) (“*Notice*”).

² Report and Order, 15 FCC Rcd 7386 (2000). 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 could be used without causing prohibited interference to a Channel 6 TV station(s) or to a foreign allotments.

³ 47 C.F.R. § 73.202(a)(1)(ii).

⁴ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, 6706 (2003) (“*NCE Second Report and Order*”).

⁵ *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*”).

with facilities fully equivalent to the proposed reserved allotment that meet 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.** Petitioner filed comments restating its interest in the NCE reservation of vacant Channel 278C2 at Huntsville, Missouri. Starboard Media filed comments supporting the proposal, stating that it would file an NCE application for vacant Channel 278C2 at Huntsville, if reserved for NCE use.

5. KIRK filed comments opposing the NCE reservation of vacant Channel 278C2 at Huntsville. KIRK submitted an engineering study alleging that Channel 204C2 and Channel 206C2 are available at the city reference coordinates of Huntsville. KIRK states that these channels are available using minimum Class C2 directional facilities of 25.5 kW ERP and 30 meters HAAT in accordance with Sections 73.211(a)(1)(v), 73.211(b)(1)(i), 73.212(a), and 73.316 of the Commission's rules.⁶ The proposed transmitter site for Channel 204C2 and Channel 206C2 is within the affected radius of TV Channel 6 Station KMOS-TV, Sedalia, Missouri. KIRK contends that a NCE station, either on Channel 204C2 or Channel 206C2 would afford full protection to TV Channel 6 Station KMOS-TV under the provisions of Section 73.525 of the Commission's rules.⁷ According to KIRK calculations, the minimum 60 dBu contours for Channel 204C2 and Channel 206C2 would render a first or second NCE service to 9,908 people (12 percent) of the total population of 83,671 people.⁸

6. Petitioner filed reply comments stating that KIRK proposed an antenna radiating 1 kW horizontal power and 25.5 kW vertically for Channel 204C2 and Channel 206C2. This antenna does not conform to the Commission's standards of engineering proof. Therefore, Petitioner contends that Channel 204C2 and Channel 206C2, as proposed by KIRK, should not be authorized. Instead, vacant Channel 278C2 at Huntsville, Missouri should be reserved for NCE use because the reserved band channels at Huntsville are precluded.

7. KIRK filed a Motion requesting to reply to Petitioner's reply comment to dispute Petitioner arguments. We will grant the Motion in order to establish a complete record. KIRK stated that its alternate facilities would utilize elliptical polarization and directional antennas to afford the required protection to TV Channel 6 Station KMOS-TV, as specified in Sections 73.525(e)(1)(iii) and 73.525(b)(4) of the Commission's rules. To this end, KIRK states that an agency is bound by its own Rules.⁹ As such, the applications for these reserved band facilities must be granted. Moreover, KIRK states that the proposed antennas for Channel 204C2 and Channel 206C2 would radiate 1 W in the horizontal plane and 25.5 kW vertically. These antennas are readily available from commercial manufacturers.¹⁰ KIRK reiterates that Channel 278C2 at Huntsville does not qualify for reclassification for NCE use because its alternative allotment proposals comply with the Commission's rules.

⁶ 47 C.F.R. §§ 73.211(a)(1)(v), 73.211(b)(1)(i), 73.212(a), and 73.316.

⁷ 47 C.F.R. § 73.525.

⁸ The total population is based on the 60 dBu contour for vacant Channel 278C2 proposed service area.

⁹ *Citing Service v. Dulles*, 354 U.S. 363, 77 S. Ct. 1152 (1957).

¹⁰ In this regard, NCE Station WDQV(FM), operates on Channel 203C2 at Mackinaw City, Michigan, using an effective radiated power of 0.001 kW in the horizontal plane (1 W) and 20 kW in the vertical plane. This antenna was manufactured by Systems With Reliability, LTD, and certified to comply with all of the Commission's requirements.

8. **Discussion.** We find that Channel 204C2 and Channel 206C2 at Huntsville are, in fact, unavailable for NCE use. Specifically, Channel 204C2 at minimum facilities would cause prohibited contour overlap to licensed NCE Station KTRM, Channel 204A, Kirksville, Missouri.¹¹ Moreover, a minimum Class C2 facility on Channel 206 would cause prohibited interference to more than 3,000 persons located within the Grade B contour of TV Channel 6, Station KMOS-TV, Sedalia, Missouri.¹²

9. Accordingly, we will reserve vacant Channel 278C2 at Huntsville, Missouri for NCE use at reference coordinates 39-29-45 NL and 92-25-05 WL. The NCE reservation of vacant Channel 278C2 at Huntsville would provide a first and/or second NCE service to twelve percent of the total population of 97,424 persons.

10. 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).

11. 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 September 18, 2006, 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>Community</u>	<u>Channel No.</u>
Huntsville, Missouri	*278C2

12. The window period for filing applications for Channel *278C2 at Huntsville will not be opened at this time. Instead, the Commission will address the issue in a subsequent Public Notice.

13. IT IS FURTHER ORDERED, That the aforementioned proceedings ARE TERMINATED.

14. 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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Media Bureau

¹¹ KIRK's engineering study alleges that Channel 204C2 is available using minimum facilities. We note that the study using a terrain propagation methodology that considers the effects of actual terrain factors on the propagation of the signal. In allotment proceedings, the staff relies on the standard propagation signal methodology that assume uniform terrain, F (50,50) curves, to predict the distance from the proposed antenna site to the 60 dBu and 70 dBu signal strength contours. There is a limited exception to the use of an alternate propagation methodology to which KIRK has not met. *See Woodstock and Broadway, Virginia*, Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988). Therefore, we reject its calculations based on the use of this alternative propagation methodology.

¹² *See* 47 C.F.R. § 73.525(c).