

**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) )

**ORDER**

**Adopted: September 1, 2006**

**Released: September 6, 2006**

By the Chief, Audio Division, Media Bureau:

1. The Audio Division, on its own motion, hereby sets aside its Memorandum Opinion and Order<sup>1</sup> in this proceeding pursuant to Section 1.113(a) of the Commission's Rules.<sup>2</sup> We reinstate the petitions for reconsideration of Southern California Public Radio and Maranatha Ministries of Hemet (collectively "Petitioners"), and permit each of the petitioners to supplement its reconsideration petition with a detailed showing under *Woodstock and Broadway*,<sup>3</sup> as set forth in more detail below.

2. **Background.** The Petitioners separately filed petitions requesting the reservation of vacant Channel 273A at Hemet, California, for noncommercial educational ("NCE") use pursuant to the Commission's relaxed reservation policy, as set forth in the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*.<sup>4</sup> Under this expanded reservation standard, a proponent must demonstrate that it is technically precluded from using a reserved band FM 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 its proposed station, and that the population receiving a first and/or second NCE service exceeds 2,000 persons.<sup>5</sup>

3. Both petitions were returned by staff letters because the proposals failed to meet the first and/or second NCE radio service criterion, and each Petitioner separately filed a petition for reconsideration. The *MO&O* denied the petitions for reconsideration because the Petitioners used actual terrain data to plot allotment and NCE station 60 dBu contours to determine first and second NCE radio service levels that their proposals would provide at Hemet. The *MO&O* held that use of actual terrain data is limited to certain city of license modification procedures for existing stations under criteria set forth in *Woodstock and Broadway*.<sup>6</sup> These criteria include having a reasonable assurance of the continued availability of the proposed transmitter site and FAA approval for the site.

<sup>1</sup> See *Hemet, California*, Memorandum Opinion and Order, 21 FCC Rcd 8465 (MB 2006) ("*MO&O*").

<sup>2</sup> 47 C.F.R. § 1.113(a)

<sup>3</sup> See *Woodstock and Broadway, Virginia*, Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988) ("*Woodstock and Broadway*").

<sup>4</sup> Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Report and Order*"). 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 in the noncommercial reserve band (Channels 201 through 220) without causing prohibited interference to a Channel 6 TV station or to a foreign broadcast station.

<sup>5</sup> See 47 C.F.R. § 73.202(a)(1)(ii).

<sup>6</sup> *Id.* n. 3.

4. **Discussion.** We believe that the public interest is best served by narrowly expanding the scope of situations in which rulemaking petitioners may use actual terrain in FM allotment proceedings. Accordingly, we will extend the *Woodstock and Broadway* policy to permit the use of our standard FM propagation methodology to calculate first and second NCE service benefits in connection with NCE allotment reservation requests. This limited modification does not alter our allotment procedures, which generally do not permit use of actual terrain data because the successful applicant and its proposed transmitter site are determined subsequent to the allotment proceeding. In this instance, however, we find that a limited exception to our policy is warranted. The actual terrain methodology provides a more reliable measure of NCE service and, thus, will better effectuate the Commission's goal of promoting NCE service to underserved communities. Moreover, this policy will complement our related application requirement. Under the relaxed reservation policy, reserved allotments are conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that no application for a reserved band allotment proposes such service, the allotment becomes unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures.<sup>7</sup> NCE rulemaking proponents wishing in the future to take advantage of this exception to our uniform terrain methodology must use Section 73.313 of the Commission's Rules<sup>8</sup> to calculate all relevant NCE station contours. In addition, a reservation proponent must demonstrate that it has reasonable assurance of site availability for the proposed site and must obtain FAA approval for a tower at the proposed site.<sup>9</sup>

5. ACCORDINGLY, IT IS ORDERED, That our action in *Hemet, California*<sup>10</sup> is set aside pursuant to Section 1.113(a) of the Commission's Rules.

6. IT IS FURTHER ORDERED, that the petitions for reconsideration of Southern California Public Radio and Maranatha Ministries of Hemet are reinstated.

7. IT IS FURTHER ORDERED, that Southern California Public Radio and Maranatha Ministries of Hemet may each, separately, supplement its respective petition for reconsideration as set forth herein within 30 days from the release date of this *Order*.

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

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>7</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, 6705 (2003).

<sup>8</sup> See 47 C.F.R. § 73.313.

<sup>9</sup> In the event that either of the Petitioners elects to supplement its reconsideration petition, we will require evidence that a request for FAA approval has been requested. In this event, further action in this proceeding will be deferring until an FAA determination is issued.

<sup>10</sup> *Id.* n.1.