

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

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|---------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MB Docket No. 05-54 |
| Table of Allotments, |) | RM-11151 |
| FM Broadcast Stations. |) | |
| (Otter Creek, Florida) |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 22, 2006

Released: February 24, 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 Living Proof, Inc. (“Petitioner”), proposing the reservation of vacant Channel 240A at Otter Creek, Florida for noncommercial educational (“NCE”) use. Petitioner filed comments. No other comments were received in this proceeding.

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 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 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 such population must exceed 2,000 persons. 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*.³ In a *NCE 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*.⁴

3. As stated in the *Notice*, Petitioner filed a proposal requesting the reservation of vacant Channel 240A at Otter Creek, Florida for NCE use. In response to the *Notice*, Petitioner filed comments restating its interest in the NCE reservation of vacant Channel 240A at Otter Creek. Petitioner states that the reservation of the allotment would provide 2,092 persons with a first NCE service and 1,198 persons with a second NCE service.

¹ *Otter Creek, Florida*, 20 FCC Rcd 3585 (MB 2005) (“*Notice*”).

² 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 could be used without causing prohibited interference to Channel 6 TV station(s) and to foreign allotments.

³ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* (“*NCE Second Report and Order*”), 18 FCC Rcd 6691 (2003).

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

4. **Discussion.** Our staff engineering analysis has determined that there are no NCE channels available at Otter Creek and that the NCE reservation of vacant Channel 240A at Otter Creek would, in fact, provide a first and/or second NCE service to 3,419 persons (31.8 percent) of the total population of 10,735 persons. Accordingly, we are reserving vacant Channel 240A at Otter Creek, Florida for NCE use.⁵

5. 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).

6. 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 FURTHER ORDERED, That effective April 10, 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>Communities</u> | <u>Channel No.</u> |
|----------------------|--------------------|
| Otter Creek, Florida | *240A |

7. The window period for filing noncommercial educational applications for Channel *240A at Otter Creek, Florida will not be opened at this time. Instead, the issue of opening a filing window for this NCE allotment will be addressed by the Commission in a subsequent order.

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

9. 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

⁵ The reference coordinates for Channel *240A at Otter Creek, Florida are 29-16-52 NL and 82-51-42 WL.