

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

In the matter of	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-101
Table of Allotments,	)	RM-11159
FM Broadcast Stations.	)	
(Jackson, Wyoming)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: March 7, 2007**

**Released: March 9, 2007**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*<sup>1</sup> filed by Jackson Hole Community Radio ("Petitioner") proposing to amend the FM Table of Allotments, Section 73.202(b) of the rules, to allot Channel \*294C2 at Jackson, Wyoming, and reserve it for noncommercial educational ("NCE") use. Petitioner filed comments in support of its proposal, reiterating its interest in the channel. The University of Wyoming ("University") licensee of Station KUJW(FM), Jackson, Wyoming, filed comments in opposition, and Petitioner filed reply comments.

2. In *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.<sup>2</sup> Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved band channel (Channels 200 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 contour of the proposed station, and that such population is at least 2000 persons.<sup>3</sup>

3. In support of the proposal, Petitioner states that there is a need for new NCE service at Jackson, Wyoming. The community has a 2000 U.S. Census population of 8,647 persons and is served by one 3 kilowatt NCE radio station. Petitioner claims that its proposal fulfills the requirements set forth in the *NCE Report and Order* because Channel 294C2 as proposed would provide a second NCE service to over 20,000 persons, which is significantly more than 10 percent of the population in the 1 mV/m service area for its proposal. In addition, Petitioner claims that its proposal also satisfies the technical preclusion criterion set forth in the *NCE Report and Order* because there are no channels available in the

<sup>1</sup> *Jackson, Wyoming*, Notice of Proposed Rule Making, 20 FCC Rcd 5257 (MB 2005).

<sup>2</sup> *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 nonreserved 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 or a foreign broadcast station.

<sup>3</sup> *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* Second Report and Order, 18 FCC Rcd 6691 (2003) ("NCE Second Report and Order").

FM reserved band based on the preclusion test set forth in the *NCE Report and Order*.

4. University opposes Petitioner's request. University states that Petitioner provided insufficient documentation to support its claim that its proposal would provide a first and/or second service to the required number of people. It also claims that Petitioner failed to take into account two construction permits and two applications for construction permits for NCE channels proposing to serve Jackson when it made its claims regarding first and/or second service. University contends that these proposals, when operational, would provide sufficient NCE service to Jackson to preclude a grant of Petitioner's proposal to reserve Channel \*294C2 under the criteria set forth in *NCE Report and Order*. In response to University's allegations about its showing for first and second NCE service, Petitioner claims that unbuilt construction permits and applications for new NCE stations should not be taken into account in the service analysis because they provide no radio services.

5. We will grant Petitioner's proposal to allot Channel \*294C2 at Jackson and reserve it for NCE use. Our analysis confirms that there are no channels available in the FM reserved band. It also confirms that there are two construction permits authorized for Jackson, in the reserved band, on Channels 202 and 206, and two applications on file which are pending for Channel 216A.<sup>4</sup> However, even taking these construction permits into account as our analysis requires,<sup>5</sup> we have determined that Channel \*294C2 as proposed could provide a first or second NCE service to more than 10% percent of the population within its 1 mV/m service area, and that population is over 2,000 persons.<sup>6</sup> Channel \*294C2 can be allotted at Jackson without a site restriction.<sup>7</sup>

6. 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).

7. 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 April 23, 2007, 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>City</u>	<u>Channel No.</u>
Jackson, Wyoming	227C, 237C, 245C1, *294C2

8. The window period for filing NCE applications for Channel \*294C2 at Jackson will not

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<sup>4</sup> The construction permits are Station KNIL, Channel 202C3, File No. BPED-19981231MI and Station KURT, Channel 206C3, File No. BPED-1231MK. The applications for Channel 216A are File No. BNPED-19991214ACD and BPED-1990301MA.

<sup>5</sup> *See Santee Cooper Broadcasting Company of Hilton Head, Inc.*, Decision, 99 FCC2d 781 (Rev. Bd. 1984) *recon. den.* Memorandum Opinion and Order, 100 FCC2d 469 (1985), *citing Daytona Broadcasting Co., Inc.*, Decision 55 RR2d 1326, 1336, n 29 (Rev. Bd. 1984)(construction permits are cognizable as reception services for purposes of Section 307(b) of the Communications Act of 1934, as amended); *see also Greenup, Kentucky and Athens, Ohio*, Report and Order, 2 FCC Rcd 4319 (MMB 1987); *aff'd in relevant part*, Memorandum Opinion and Order, 4 FCC Rcd 3843 (MMB 1989); *aff'd in relevant part*, Memorandum Opinion and Order, 6 Rcd 1493 (1991); *appeal dismissed sub nom. WATH, Inc. v. FCC*, D.C. Cir. No. 91-1268 (Sept. 16, 1991)(vacant allotment is considered an existing service for purposes of first and second aural service analysis under Section 307(b) of the Act).

<sup>6</sup> 3,929 people, or 15.4% of the total population (25,565 persons) within the 1mV/m contour of proposed Channel \*294C2 would receive a first or second NCE service.

<sup>7</sup> The coordinates for Channel \*294C2 at Jackson are 43-28-42 NL and 110-45-42 WL.

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.

9. IT IS FURTHER ORDERED That the Opposition filed by the University of Wyoming IS DISMISSED.

10. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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