

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 07-1
Table of Allotments,)	RM-11356
FM Broadcast Stations.)	
(Hemet, California))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: October 31, 2007

Released: November 2, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*¹ issued at the request of Southern California Public Radio (“Southern California”), proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules (the “Rules”), to reserve vacant Channel 273A at Hemet, California for noncommercial educational (“NCE”) use. Southern California filed comments. No other comments or counterproposals were received in response to the *Notice*.

2. **Background.** The *Notice* seek public comment on whether a rulemaking proponent may use actual terrain pursuant to Section 73.313 of the Rules² to calculate first and second NCE service benefits in connection with NCE allotment reservation requests consistent with our *Woodstock and Broadway* policy.³ Under this limited exception, a reservation proponent would be permitted to use actual terrain values if it demonstrates that it has reasonable assurance of site availability of the specified transmitter site and obtains FAA approval for the required tower at the proposed site in compliance with our *Woodstock and Broadway* policy.

3. Southern California filed comments, supporting the use of actual terrain data pursuant to Section 73.313 of the Rules to calculate first and second NCE services. Moreover, it reiterates its interest in the reservation of vacant Channel 273A at Hemet, California for NCE use. Southern California states that this reservation would provide a first and/or second NCE service to 30.9 percent (40,880 persons) of the total population (132,362 persons) within the proposed Hemet NCE station’s 1mV/m (60 dBu) contour. In accordance with *Woodstock and Broadway*, Southern California has documented that it has reasonable assurance at its proposed transmitter site.

¹ See *Hemet, California*, Notice of Proposed Rule Making, 22 FCC Rcd 10311 (MB 2007) (“*Notice*”)

² 47 C.F.R. § 73.313

³ *Woodstock and Broadway, Virginia*, Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988) (“*Woodstock and Broadway*” (stating that a rulemaking proponent seeking an upgrade of an existing station may use actual terrain data to calculate city-grade coverage if such petitioner has a reasonable assurance of the continued availability of its proposed transmitter site and has obtained FAA approval for the site).

4. **Discussion.** We find that the public interest is best served by permitting rulemaking proponents to use actual terrain data pursuant to Section 73.313 of the Rules to calculate first and second NCE service benefits with respect to NCE allotment reservations because the actual terrain methodology provides a more reliable measure of NCE radio services. This new procedure will better effectuate the Commission's goal of promoting NCE service to underserved communities. Additionally, the reserved allotment will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and/or second NCE service under the relaxed reservation policy.⁴ In the event that no application for a reserved band allotment proposes such service, the allotment will become unreserved and subject to the Commission's competitive bidding licensing procedures.⁵

5. Under this policy, a reservation proponent must demonstrate that it has reasonable assurance of site availability of the specified transmitter site; and obtain FAA approval and local zoning, if necessary, for the required tower at the requested site in compliance with our *Woodstock and Broadway* policy. This limited expansion of the *Woodstock and Broadway* policy will not alter our FM 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 allotment proceeding under our competitive bidding licensing procedures. Accordingly, we are reserving vacant Channel *273A at Hemet for NCE use. Petitioner is required to file its NCE application for Channel *273A at Hemet at the specified site coordinates.⁶ As stated in the *Notice*, Southern California has submitted the required documentation in accordance with our *Woodstock and Broadway* policy. This reservation will provide 40,880 persons (30.9 percent) of the total population of 132,362 persons with a first and/or second NCE radio service located within the Hemet NCE station's 1 mV/m (60 dBu) contour.

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. 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 December 17, 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>Communities</u>	<u>Channel No.</u>
Hemet, California	*273A

8. The window period for filing noncommercial educational applications for Channel *273A at Hemet, California will not be opened at this time. Instead, the issue of opening a filing window for this NCE reserved allotment will be addressed by the Commission in a subsequent order.

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

⁴ See 47 C.F.R. § 73.202(a)(1)(ii).

⁵ See *NCE Second Report and Order*, Second Report and Order, 18 FCC Rcd 6691, 6705 (2003)(conditioning reserved allotment on the construction and licensing of stations that provide requisite level of first and/or second NCE service).

⁶ The reference coordinates are 33-44-44 NL and 116-59-18 WL.

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

FEDERAL COMMUNICATIONS COMMISSION

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