

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 08-67
Table of Allotments,) RM-11426
FM Broadcast Stations.)
(La Grande and Prairie City, Oregon)
)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 22, 2008

Released: October 24, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding which was initiated by a Petition for Rule Making (the “Petition”) filed by KSRV, Inc., licensee of Station KWRL, Channel 225C1, La Grande, Oregon.¹ Pacific Empire Radio Corporation (“Pacific Empire”) filed a Counterproposal. KSRV, Inc. filed Comments and an Opposition to Counterproposal. Pacific Empire filed a Response to Opposition to Counterproposal. For the reasons discussed below, we are dismissing the Counterproposal and adopting the KSRV, Inc. Petition for Rule Making proposal to substitute Channel 272C for Channel 260C at Prairie City, Oregon.

I. BACKGROUND

2. Adoption of the Petition would permit Station KWRL to continue operations on Channel 260C1.² In response to the *Notice*, Prairie Empire Radio Corporation (“Prairie Empire”), permittee of Station KUBQ, Channel 254C2, LaGrande, Oregon, and Station KKBC, Channel 237A, Baker, Oregon, and Station KRJT, Channel 290A, Elgin, Oregon, filed a Counterproposal. In that Counterproposal, Pacific Empire proposes the allotment of Channel 272C to Huntington, Oregon, as a first local service and Channel 254C3 to College Place, Oregon, as a first local service. In order to accommodate these new allotments, Pacific Empire proposes a series of channel substitutions involving six communities in Oregon and Washington. Included among those substitutions is a request to issue an Order to Show Cause directed to New Northwest Broadcasters, LLC, licensee of Station KNLN, Channel 239C, Walla Walla, Washington, to show cause why its license should not be reclassified to specify operation on Channel 239C0. Pacific Empire also proposes the substitution of Channel 260C1 for Channel 225C1 at La Grande, Oregon, reallocation of Channel 260C1 to Elgin, Oregon, and modification of the Station KWRL license to specify operation on Channel 260C1 at Elgin.

¹ *La Grande and Prairie City, Oregon*, Notice of Proposed Rule Making, 23 FCC Rcd 9319 (MB 2008) (“*Notice*”).

² In MB Docket No. 05-9, we modified the Station KWRL license to specify operation on Channel 225C1 in lieu of Channel 260C1. *Ione, Oregon, et al.*, Report and Order, 21 FCC Rcd 10017 (MB 2006). In doing so, we required Two Hearts Communications, LLC to reimburse KSRV, Inc. for the costs of changing the Station KWRL channel.

II. DISCUSSION

3. At the outset, we dismiss the Pacific Empire Counterproposal because it failed to file construction permit applications (FCC Form 301) with the required filing fees for its proposals to add Channel 272C to Huntington, Oregon, and Channel 254C3 to College Place, Washington, Pacific Empire did not simultaneously file an application construction permits (FCC Form 301) with its Counterproposal specifying each of the proposed facilities along with the appropriate filing fee. In *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, the Commission adopted a procedure requiring both a rulemaking proponent and a counterproponent for a new FM allotment to simultaneously file Form 301 specifying the proposed facility.³ This requirement is a mechanism to encourage only *bona fide* drop-in proponents to participate in allotment proceedings. Pacific Empire has not complied with this requirement. In addition, Pacific Empire's proposal to reclassify Station KNLT, Channel 239C to Channel 239C0 in the context of its Counterproposal is procedurally defective. In *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, the Commission specifically precluded rulemaking proponents from initiating the Class C0 reclassification in the context of a counterproposal.⁴ Finally, Pacific Empire's request to involuntarily modify the Station KWRL license from Channel 225C1 at LaGrande to Channel 260C1 at Elgin, Oregon, is also procedurally defective. In *Modification of FM and TV Authorizations to Specify a New Community of License*, the Commission established a procedure by which a licensee or permittee may change the community of license of its authorization.⁵ There is no provision in *Community of License* which would permit a third party to request an involuntary change in community of license.

4. As requested, we are substituting Channel 272C for Channel 260C at Prairie City, Oregon.⁶ This substitution will allow Station KWRL to remain on Channel 260C1 thereby avoiding a reimbursement expense by Two Hearts Communications, LLC and potential listener confusion and audience loss occasioned by the change in channel. This will also allow Station KWRL to operate with an omnidirectional antenna pattern.⁷

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).

³ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Service*, Report and Order, 21 FCC Rcd 14212 (2006).

⁴ *Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21664 (2000).

⁵ *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁶ The reference coordinates for Channel 272C at Prairie City, Oregon, are 45-07-21 and 117-46-44.

⁷ KSRV, Inc. has filed an application proposing the modification of the Station KWRL license to specify operation on Channel 260C1. File No. BMPH-20080409ACO.

III. ORDERING CLAUSES

6. Accordingly, pursuant to authority contained in Sections 4(i), 5 (c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 8, 2008, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Prairie City, Oregon	272C

7. A filing window for the Channel 272C allotment at Prairie City, Oregon, will not be opened at this time. Instead, the issue of opening this allotment for auction 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 Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau