

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 09-9
FM Broadcast Stations.)	RM-11511
(Nevada City and Mineral, California))	
)	
)	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 6, 2009

Released: May 8, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*¹ issued at the request of Shamrock Communications, Inc. (“Petitioner”), the permittee of a new FM station on Channel 297C, Alturus, California; and (2) supporting comments filed by the Petitioner. No other comments were received. For the reasons discussed below, we will grant the rulemaking petition in part.

2. **Background.** In response to the Petitioner’s rulemaking petition, the *NPRM* proposed the deletion of vacant FM Channel 297A at Nevada City, California, and the allotment of Channel 297A at Mineral, California, as a first local service. These proposed channel changes were filed as part of a hybrid application and rulemaking proposal involving the Petitioner’s concurrently filed minor change application.² In this application, the Petitioner proposes the reallocation of Channel 297C from Alturus, California, to Fernley, Nevada, and the associated modification of its construction permit for a new FM station at Alturus, pursuant to the provisions of Section 1.420(i) of the Commission’s Rules.³ The modification of the Alturus construction permit is contingent upon the deletion of the Nevada City allotment.

3. In its Comments, the Petitioner incorporates its rulemaking petition in support of the deletion of vacant FM Channel 297A at Nevada City and restates its intention to participate in the auction process for a new FM station on Channel 297A at Mineral, California. As requested by the *NPRM*, the Petitioner filed a construction permit application for Channel 297A at Mineral and paid the requisite filing fee.⁴ Further, due to a terrain obstruction, noted in the *NPRM*, between the initial reference coordinates specified by the Petitioner and the principal community of Mineral, the Petitioner proposes a different site that obviates the terrain obstruction.⁵

¹ *Nevada City and Mineral, California*, Notice of Proposed Rule Making, 24 FCC Rcd 1282 (MB 2009) (“*NPRM*”).

² See File No. BMPH-20071108ACY.

³ 47 C.F.R. § 1.420(i).

⁴ See File No. BNPB-20090330AGA.

⁵ These reference coordinates are 40-15-36 NL and 121-32-06 WL.

4. **Discussion.** First, we will delete vacant Channel 297A at Nevada City, California. As explained in the *NPRM*, the Commission's long-standing policy in this area is generally not to delete a vacant allotment in which interest has been expressed, absent a compelling reason to do so.⁶ In response to the *NPRM*, no comments were filed by parties desiring to retain this vacant allotment or apply for it. Under these circumstances, we believe that the public interest would be served by deletion of the allotment. This action will permit the grant of the Petitioner's application⁷ and provide a second local service to Fernley (population 8,543)⁸ under FM Allotment Priority (4).⁹ By way of contrast, Alturas (population 19,963) has six local FM services.¹⁰ When no interest is expressed in retaining a vacant allotment, we need not undertake a Section 307(b) comparison of the public interest benefits of retaining or deleting the allotment or allotting that channel at a different community such as Mineral.¹¹ In any event, Nevada City would not lose its sole local broadcast service because noncommercial educational Station KVMR(FM), Channel 208B1, is licensed to the community.

5. We will not, however, allot Channel 297A as a first local service to Mineral. Although the new reference coordinates for this allotment proposed by the Petitioner obviate the terrain obstruction noted in the *NPRM*, the city-grade (70 dBu) contour does not encompass entirely the boundaries of Mineral as required under the Commission's Rules.¹² Specifically, a staff engineering analysis reveals that approximately 75 per cent of the boundaries of the community are covered. Because, at the allotment stage, a principal community must be covered 100 percent by the 70 dBu signal of the proposed allotment, the Petitioner's proposed allotment cannot be made.¹³

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) 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 June 22, 2009, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

⁶ See, e.g., *Montrose and Scranton Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 6305, 6306 (1990) (denying request to delete an allotment because interest had been expressed in retaining the allotment).

⁷ The Petitioner's application, File No. BMPH-20071108ACY, is being granted simultaneously with the release of this *Report and Order*.

⁸ Vacant Channel 231C3 also has been allotted to Fernley.

⁹ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

¹⁰ Alturas has licensed Stations KCNO(FM), Channel 233C1, KALT-FM, Channel 293C1, KCFJ(AM), 570 kHz, a construction permit for reserved band Channel 219C1, and vacant FM allotments on Channels 268C1 and 277C.

¹¹ See, e.g., *Cheyenne and Saratoga, Wyoming*, Report and Order, 11 FCC Rcd 1073 (MMB 1996) (deleting a vacant allotment at Saratoga to accommodate a new allotment at Cheyenne because no interest was expressed in retaining the Saratoga allotment); *Northport, Alabama, and Macon, Georgia*, Report and Order, 8 FCC Rcd 2161 (MMB 1993) (deleting a vacant allotment at Macon to accommodate an upgrade in the class of a Northport station because no interest was expressed in retaining the Macon allotment). In these cases, the vacant allotments were deleted without Section 307(b) comparisons.

¹² See 47 C.F.R. § 73.315(a).

¹³ See, e.g., *Sonora, California*, Report and Order, 6 FCC Rcd 6042 (MMB 1991) (denying rulemaking petition to upgrade class of an FM station because of lack of city grade coverage over the entire principal community).

<u>Community</u>	<u>Channel No.</u>
Nevada City, California	---

7. IT IS FURTHER ORDERED, That the rulemaking petition (RM-11511) filed by Shamrock Communications IS GRANTED in part and is OTHERWISE DENIED.

8. A copy of this *Report and Order* will be sent to Patricia M. Chuh, Esq. and Kenneth E. Satten Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, DC 20037 (Counsel for Shamrock Communications, Inc.); and Dana J. Puopolo, 1406 N. Hobart Blvd., Los Angeles, CA 90027(Original Petitioner for Channel 297A, Nevada City, California).

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

10. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau