

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 08-68
Table of Allotments,)	RM-11421
FM Broadcast Stations.)	
(Beatty and Goldfield, Nevada))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 18, 2009

Released: February 20, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“*Notice*”),¹ issued at the request of Keilly Miller (“*Petitioner*”), proposing the allotment of Channel 259A at Beatty, Nevada, and Channel 262C1 at Goldfield, Nevada, as their first local FM transmission services. *Petitioner* filed comments. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we are amending the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules (the “*Rules*”),² by allotting Channel 259A at Beatty, and Channel 262C1 at Goldfield.

2. **Background.** The *Notice* proposed the allotments of Channel 259A at Beatty, Nevada, and Channel 262C1 at Goldfield, Nevada, to accommodate the hybrid FM community of license application that proposes the substitution of Channel 261C3 for Channel 261C at Beatty, Nevada, the reallocation of Channel 261C3 from Beatty, Nevada, to Crystal, Nevada, as its first local FM transmission service, and the modification of the construction permit for this new FM station.³ As stated in the *Notice*, the proposed allotment of Channel 259A at Beatty, Nevada prevents the removal of Beatty’s first potential⁴ local FM transmission service due to the proposed reallocation of the unbuilt new FM station to Channel 261C3 at Crystal.

3. **Discussion.** Accordingly, we are allotting Channel 259A at Beatty, and Channel 262C1 at Goldfield, as first local FM transmission services. A staff engineering analysis indicates that Channel 259A can be allotted to Beatty consistent with the minimum distance separation requirements of the Rules with a site restriction 8.6 kilometers (5.3 miles) west located at reference coordinates 36-56-05 NL and 116-51-00 WL. Moreover, Channel 262C1 can be allotted to Goldfield consistent with the minimum distance separation requirements of the Rules with a site restriction 0.6 kilometers (0.4 miles) northeast of the community located at reference coordinates 37-42-41 NL and 117-13-56 WL. The Crystal hybrid

¹ See *Beatty and Goldfield, Nevada*, Notice of Proposed Rule Making, 23 FCC Rcd 14851 (MB 2008).

² 47 C.F.R. § 73.202(b).

³ See File No. BMPH-20070727ABV.

⁴ In this instance, Beatty will not be deprived of its sole local existing service because the new FM station’s facilities at Beatty are unbuilt. See *Linden, Texas et al.*, Report and Order, 16 FCC Rcd 10853 (MMB 2001) (holding that removal of unbuilt facilities does not present the same loss of service concerns as removal of a licensed station).

community of license application, File No. BMPH-20070727ABV, will be granted simultaneously with the release of this *Report and Order*.⁵

4. 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).

5. **Ordering clauses.** 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 6, 2009, 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>
Beatty, Nevada	259A
Goldfield, Nevada	262C1

6. The window period for filing applications for Channel 259A at Beatty, and Channel 262C1 at Goldfield 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.

7. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

8. 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 grant of this application does not violate our vacant allotment backfill policy with respect to the new allotment of Channel 259A at Beatty since the new FM station at Beatty is unbuilt. *See Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004).