

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

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| Table of Allotments, |) | MB Docket No. 10-108 |
| FM Broadcast Stations. |) | |
| (Pacific Junction, Iowa) |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: November 22, 2010

Released: November 24, 2010

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*,¹ proposing the deletion of FM Channel 299C2 at Pacific Junction, Iowa; and (2) Comments filed by Connoisseur Media, LLC. (“Connoisseur”), the permittee of Station KGGG(FM), Channel 299C2, Pacific Junction, Iowa. No other comments were received. For the reasons discussed below, we will delete Channel 299C2 at Pacific Junction, Iowa from the Table of FM Allotments.

2. **Background.** The Audio Division, on its own motion, proposed the deletion of Channel 299C2 due to difficulties encountered by Connoisseur in overcoming objections raised by the Federal Aviation Administration (“FAA”) to the activation of this allotment.² As detailed in the *NPRM*, Connoisseur was the winning bidder of Channel 299A in Auction 37, which was conducted in 2004. Both Connoisseur’s original construction permit granted in 2005 and a 2007 modification of the construction permit to Channel 299C2 authorize operation at the same antenna height on the same existing tower.³ While Connoisseur was preparing to initiate operations, it discovered that the FAA had previously imposed a condition on the tower owner to coordinate any new frequencies on the tower with the FAA. A change of ownership in the tower prompted the FAA to notice Connoisseur’s proposed use of Channel 299C2 at Pacific Junction after the modification was granted in 2007. The FAA issued a second Notice of Presumed Hazard for the use of the Pacific Junction channel due to predicted electromagnetic interference (“EMI”) to the Instrument Landing System frequency configurations for Eppley Airfield at Omaha, Nebraska, and Offutt Air Force Base in late 2009.⁴ In its 2009 notice, the FAA stated that replacement frequencies could not be found. The *NPRM* also observed that a review by Media Bureau staff concluded that no alternative FM channels were available to serve Pacific Junction.⁵ The *NPRM* further noted that “the FAA problems associated with Channel 299C2 appear to be too

¹ *Pacific Junction, Iowa*, Notice of Proposed Rule Making, 25 FCC Rcd 4983 (MB 2010) (“*NPRM*”).

² *See id.*

³ *See id.* at 4983.

⁴ Federal Aviation Administration, “Notice of Presumed Hazard,” Aeronautical Study No. 2007-ACE-3320-OE, issued November 16, 2009; and “Notice of Presumed Hazard,” Aeronautical Study No. 2007-ACE-3320-OE, issued November 30, 2007.

⁵ *See NPRM*, 25 FCC Rcd. at 4984 ¶3.

substantial to permit the construction and operation of a new Pacific Junction station” and that “the retention of the FM allotment at Pacific Junction would no longer serve the public interest.”⁶ In view of these difficulties, the *NPRM* solicited comment on the deletion of Channel 299C2 at Pacific Junction.⁷

3. In its Comments, Connoisseur supports the proposed deletion of Channel 299C2 at Pacific Junction. Despite its prolonged attempts to build the station, Connoisseur contends that the FAA objections have made activation of this allotment impossible anywhere in the permissible area in which the station can be located. Connoisseur states that it retained two FAA consulting firms to review this situation and engaged in prolonged discussions with the FAA, but no solution could be identified. Connoisseur further notes that, while it is willing to pay for changes in the frequencies of the FAA communications facilities in the area, alternate frequencies are not available. No other parties have expressed any interest in retaining the Pacific Junction allotment or proposed an FM facility that would be feasible and otherwise consistent with FAA requirements. Under these circumstances, Connoisseur believes that the allotment should be deleted.

4. **Discussion. Deletion of Channel.** As explained in the *NPRM*, the Commission’s long-standing policy is not to allot or retain a channel where there is no site that would meet FAA criteria and the Commission’s spacing requirements.⁸ We believe that Connoisseur has met this standard. The record reveals that neither a Class C2 nor a Class A facility can be implemented on Channel 299 anywhere in the permissible area in which a station can be located due to EMI objections raised by the FAA on behalf of itself and the U.S. Air Force. Further, there are no other FM channels that could be substituted for Channel 299C2 at Pacific Junction and no alternate FAA frequencies to remedy this problem. Finally, no other party expressed an interest in retaining this allotment or suggested a site that would be technically feasible and meet FAA criteria. Accordingly, we will delete Channel 299C2 at Pacific Junction. Because there is no longer a viable allotment at Pacific Junction, we will delete the KGGG(FM) call sign and all associated authorizations.⁹

5. 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 January 7, 2011, the Media Bureau’s

⁶ See *NPRM*, 25 FCC Rcd at 4984, ¶ 3.

⁷ Any party filing a comment expressing an interest in retaining this allotment was required to provide evidence, demonstrating that a properly spaced site is technically feasible, meets FAA criteria, and is available. See *id.* at 4985 ¶5. Connoisseur also filed a request for refund of payments that it made in connection with its winning bid for the Pacific Junction FM permit. See Connoisseur’s Petition for Refund of Winning Bid Payment, March 27, 2009, as supplemented June 26, 2009 and Nov. 30, 2009. In these filings, Connoisseur provided additional details concerning its efforts to resolve the EMI issues identified by the FAA and to locate possible alternate FM channels to provide required coverage to Pacific Junction.

⁸ See, e.g., *La Fayette, Georgia*, Report and Order 13 FCC Rcd 2093 (MMB 1998) (deleting FM allotment due unavailability of fully-spaced sites or alternate channels that would meet FAA approval regarding EMI interference and would provide the requisite city-grade coverage). Cf. *Jacksonville, Pine Knoll Shores, and Harkers Island, North Carolina*, Memorandum Opinion and Order, 10 FCC Rcd 13159 (MMB 1995) (deleting FM allotment at Pine Knoll Shores because specified transmitter site is unavailable due to environmental restrictions and because there are no other sites that would comply with the Commission’s minimum distance separation and city-grade coverage requirements); *Pinckneyville, Illinois*, Report and Order, 41 R.R. 2d 69 (MMB 1977) (deleting FM allotment “erroneously made” because of lack of availability of a transmitter site that meets spacing and city-grade coverage requirements).

⁹ Connoisseur’s construction permit, File No. BMPH-20061019AAM, was set to expire on March 18, 2008, but the staff granted Connoisseur a waiver of Section 73.3598(a) of the Commission’s Rules, which establishes a three-year construction period. See *Letter to David Oxenford*, Ref. 1800B3-IB (Jan. 28, 2008). At that time, three months, twelve days remained in the station’s construction permit. This remaining time is now moot in view of the deletion of the allotment and Connoisseur’s construction permit.

Consolidated Data Base System (“CDBS”) will reflect the deletion of Channel 299C2 at Pacific Junction, Iowa.¹⁰

6. IT IS FURTHER ORDERED, That the construction permit (File No. BNPH-20041228AAI as modified by BMPH-20061019AAM) IS CANCELLED and the KGGG(FM) call sign IS DELETED.

7. A copy of this *Report and Order* will be sent to David D. Oxenford, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006 (Counsel for Connoisseur Media, LLC.).

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

9. 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

¹⁰ Although the *NPRM* proposed the deletion of Channel 299C2, Pacific Junction, Iowa, from Section 73.202(b), the FM Table of Allotments, the channel is no longer listed in Section 73.202(b) due to its authorization and is included instead in the Media Bureau’s CDBS as a reserved assignment for Station KGGG(FM). *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14221, ¶ 15 (2006) (removing allotments of currently authorized and awarded FM facilities from the FM Table of Allotments). As a result, we are deleting Channel 299C2 from the Media Bureau’s CDBS instead of from Section 73.202(b).