

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 10-118
Table of Allotments,	)	RM-11603
FM Broadcast Stations.	)	RM-11631
(Gearhart, Madras, Manzanita, and Seaside, Oregon)	)	
	)	
Station KNRQ-FM, to Change Community of License	)	File No. BMPH-20100805AKO
from Tualatin to Aloha, Oregon. <sup>1</sup>	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: July 18, 2011**

**Released: July 19, 2011**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* issued in response to a Petition for Rule Making filed by Black Hills Broadcasting, L.C. (“Petitioner”).<sup>2</sup> Also before us are: (1) a hybrid Application and a Counterproposal (the “Application” or “Counterproposal”)<sup>3</sup> filed by Cumulus Licensing LLC (“Cumulus”), permittee of Station KNRQ-FM, Tualatin, Oregon; (2) Comments filed by the Petitioner; (3) an Informal Objection to the Application (“the Objection”) filed by Earnest R. Hopseker (“Hopseker”); and (4) an Opposition to the Objection filed by Cumulus. For the reasons discussed below, we grant the Petition for Rule Making, the Application, and the Counterproposal and deny the Objection.

2. **Background.** The *Notice* proposed the allotment of FM Channel 243A at Gearhart, Oregon, as a first local service. The *Notice* stated that Gearhart is an incorporated city with a 2000 US Census population of 1,189 persons, and that the Petitioner had submitted an application for Channel 243A at Gearhart, along with the requisite filing fee.<sup>4</sup> The Petitioner filed Comments, reiterating its interest in the proposed allotment of Channel 243A at Gearhart.

3. In response to the *Notice*, Cumulus also submitted timely and concurrently its Application and Counterproposal, which are mutually contingent. The Application requests the upgrade and change of community of license for Station KNRQ-FM, from Channel 250C2 at Tualatin, Oregon, to Channel 250C1 at Aloha, Oregon, without a change of transmitter site, and modification of its construction permit to reflect these changes. To accommodate the Application, the Counterproposal proposes the substitution of Channel \*243C1 for vacant but applied for Channel \*251C1 at Madras, Oregon, which has been reserved for

<sup>1</sup> The communities of Aloha, Madras, Manzanita, Seaside, and Tualatin, Oregon, have been added to the caption.

<sup>2</sup> *Gearhart, Oregon*, Notice of Proposed Rule Making, 25 FCC Rcd 7430 (MB 2010) (“*Notice*”).

<sup>3</sup> See File No. BMPH-20100805AKO and RM-11631, respectively.

<sup>4</sup> See File No. BNPB-20100513AAZ.

noncommercial educational (“NCE”) use.<sup>5</sup> Further, to facilitate the proposed allotment at Aloha, we issued, at Cumulus’s request, an *Order to Show Cause* to Dave’s Broadcasting Corporation as to why its channel for Station KCYS(FM), Seaside, Oregon, should not be changed from Channel 251A to Channel 243A.<sup>6</sup> The Counterproposal is mutually exclusive with the *NPRM*’s proposal because Channel 243A at Seaside, Oregon, conflicts with Channel 243A at Gearhart, Oregon, under the Commission’s minimum distance separation requirements.<sup>7</sup> However, to resolve the conflict with the *Notice*’s proposal, Cumulus proposes allotting alternate Channel 227A at Gearhart in lieu of Channel 243A. In order to allot Channel 227A at Gearhart, Cumulus proposes to substitute Channel 248C3 for vacant Channel 228C3 at Manzanita, Oregon.<sup>8</sup>

4. In support of its Application, Cumulus alleges that the reallocation of Station KNRQ-FM to Aloha satisfies the requirements for changing a station’s community of license because: (1) the proposed use of channel 250C1 at Aloha is mutually exclusive with the current use of Channel 250C2 at Tualatin; (2) Tualatin will not be deprived of its sole local service as Station KNRQ-FM is not yet operating at Tualatin; and; (3) the provision of a first local service at Aloha (population 41,741) is favored under Priority 3 of the FM Allotment Priorities<sup>9</sup> over the loss of a potential first local service at Tualatin (population 22,791) as Aloha has a greater population.<sup>10</sup> Cumulus further contends that a *Tuck*<sup>11</sup> showing is not required to demonstrate that Aloha is sufficiently independent to warrant a first local service preference because both Tualatin and Aloha are located in the Portland, Oregon, Urbanized Area; however, in the event that the Commission is concerned about the independence of Aloha, Cumulus states that it has submitted a *Tuck* showing.<sup>12</sup>

5. With respect to the proposed substitution of Channel \*243C1 for vacant but applied for Channel \*251C1 at Madras, Oregon, Cumulus asserts that Channel \*243C1 can be allotted to Madras at the sites

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<sup>5</sup> Two applications are pending for new NCE stations on Channel \*251C1, Madras, Oregon. See File Nos. BNPED-20100226AJY and BNPED-20100226AIL, filed by Tool Shed PDX and Educational Broadcast Service, respectively.

<sup>6</sup> See *Letter to Dave’s Broadcasting Corporation*, Reference 2-B450 (MB Mar. 14, 2011).

<sup>7</sup> See 47 C.F.R. § 73.207.

<sup>8</sup> The Application and Counterproposal were subsequently placed on Public Notice, and no additional pleadings were filed. See *Public Notice*, Report No. 2916 (September 28, 2010).

<sup>9</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988) (“*Revision of Assignment Policies*”). The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3).

<sup>10</sup> See Cumulus’s Counterproposal at 3.

<sup>11</sup> See *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374, 5378 (1978) (“*Tuck*”) (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

<sup>12</sup> See Cumulus’s Counterproposal at 4-8; and Cumulus’s Application at Exhibit E.

specified in both of the applications and at the current allotment site for Channel \*251C1.<sup>13</sup> Cumulus also states that it will reimburse Station KCYS(FM), Seaside, Oregon, for its reasonable expenses for changing channels.

6. In his Objection to the Application, Hopseker contends that “there is absolutely no reason or benefit in moving the City of License to Aloha, as any upgrades can be accomplished with the existing permit and City of License being Tualatin.”<sup>14</sup> In addition, Hopseker argues that, Aloha is not independent of the Portland, Oregon, Urbanized area under the *Tuck* factors to warrant a first local service preference over Tualatin.<sup>15</sup> In its Opposition, Cumulus contends that Hopseker does not cite any rule, case, or policy to support his claim that, because no change of transmitter site is proposed, the station should remain at Tualatin. Cumulus also contends that Hopseker’s arguments about the independence of Aloha from the Portland Urbanized Area under the *Tuck* factors are not relevant because *Tuck* does not apply to intra-urbanized area moves.

7. **Discussion.** *Gearhart, Oregon.* Generally, conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies*.<sup>16</sup> In this instance, a comparison is no longer necessary because Cumulus proposed alternate Channel 227A at Gearhart to resolve the existing conflict.<sup>17</sup> We believe that the public interest would be served by allotting alternate Channel 227A at Gearhart because it would provide a first local service to that community and accommodate the Petitioner’s interest.<sup>18</sup> We also find that Gearhart is a community for allotment purposes as it is an incorporated community of 1,189 persons and has its own local government, police department, fire department, schools, and local businesses.<sup>19</sup> Accordingly, we allot Channel 227A in lieu of Channel 243A at Gearhart and grant the Petition for Rule Making.<sup>20</sup>

8. *Aloha, Oregon.* Because the conflict has been resolved, we next must examine Cumulus’s Application for the upgrade and reallocation of Station KNRQ-FM from Channel 250C2 at Tualatin, Oregon, to Channel 250C1 at Aloha, Oregon to determine if it meets the requirements for a station to change its community of license. A station may change its community of license without subjecting the

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<sup>13</sup> See Cumulus’s Counterproposal at 8-9.

<sup>14</sup> See Hopseker’s Objection, at 1.

<sup>15</sup> *Id.* at 2-4.

<sup>16</sup> See *supra* note 9.

<sup>17</sup> See *Notice*, Appendix, 25 FCC Rcd at 7433 (“The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved”). See also *Pinewood, South Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 7609 (1990) (approving the use of an alternate channel to resolve a conflict between mutually exclusive proposals).

<sup>18</sup> Although the Petitioner was served with a copy of the Counterproposal, it did not file any reply comments or object to the alternate channel at Gearhart.

<sup>19</sup> See *Notice*, 25 FCC Rcd at 7430.

<sup>20</sup> The reference coordinates for Channel 227A at Gearhart, Oregon, are 45-57-11 NL and 123-56-14 WL.

license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's FM allotment priorities.<sup>21</sup> Additionally, when the proposed community is located inside an Urbanized Area or could cover 50% or more of an Urbanized Area, the Commission has required an applicant to file a *Tuck* showing that the proposed community is independent of the Urbanized Area to warrant a first local service preference.<sup>22</sup> Two of these requirements have been easily satisfied and do not warrant much discussion. First, the proposed use of Channel 250C1 at Aloha is mutually exclusive with the current use of Channel 250C2 at Tualatin. Second, the reallocation of Station KNRQ-FM to Aloha will not violate the Commission's policy prohibiting the removal of a community's sole local aural service because Station KNRQ-FM is not yet operating at Tualatin.<sup>23</sup>

9. However, the next issue – whether or not there is a need for a *Tuck* showing in this case -- warrants some discussion and clarification. Since the record closed in this proceeding, the Commission adopted stricter standards regarding how it will evaluate applications to reallocate stations from rural to urban areas. The Commission established “. . . a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area rather than the named community of license.”<sup>24</sup> The Commission further provided that this presumption may be rebutted by a compelling showing of the independence of the community from the urbanized area, the community's specific need for an outlet for local expression, and the ability of the proposed station to provide that outlet.<sup>25</sup> Notwithstanding these stricter standards, we agree with Cumulus that there is no need for a *Tuck* showing where both the station's current and proposed communities of license are located within an Urbanized Area because such intra-urbanized area moves do not present the same concerns as rural to urban moves. As we

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<sup>21</sup> See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”).

<sup>22</sup> See, e.g., *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352, 10354 (1995) (requiring proponents seeking to relocate to a community adjacent to an Urbanized area that would place a city grade signal over 50 percent or more of an Urbanized Area to submit a *Tuck* showing); *Powell Meredith Communications Co., et al*, Memorandum Opinion and Order, 19 FCC Rcd 12672, 12673 n.9 (2004). The Commission recently adopted stricter standards regarding *Tuck* showings, which are discussed *infra* at ¶ 9.

<sup>23</sup> See, e.g., *Linden, Texas, et al.*, Report and Order, 16 FCC Rcd 10853, 10854 (MMB 2001) (approving reallocation of a community's sole local station because it was an unlicensed station and not a service that the public had become reliant upon); and *Chatom and Grove Hill, Alabama*, Report and Order, 12 FCC Rcd 7664, 7665 (MMB 1997) (granting reallocation of a community's only potential service because the station is not constructed).

<sup>24</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 2556, 2567, ¶ 20. (2011) (“*Rural Radio*”).

<sup>25</sup> *Id.* at 2572, ¶ 30. The Commission also stated that the compelling showing may be based upon the existing *Tuck* test, with some modifications, and that the *Tuck* factors will be more rigorously scrutinized than in the past. *Id.* at 2573.

explained in *East Los Angeles, Long Beach, and Frazier Park, California*, when the Commission adopted its change of community rule and procedures, it “. . . was concerned about a mechanical application of the FM priority for first local service that ‘would appear to allow an artificial or purely technical manipulation of the Commission’s 307(b) related policies.’”<sup>26</sup> This concern is present where a station is moving from outside of an urbanized area to a suburban community inside or proximate to an Urbanized Area and is seeking to obtain a first local service preference under Priority 3. Under those circumstances, there is a need to determine whether the suburban community is sufficiently independent of the Urbanized Area to warrant a first local service preference. However, as we explained in *East Los Angeles*, these concerns do not exist with respect to intra-Urbanized Area moves because “a first local service preference is not being used as a basis to enter the market.”<sup>27</sup> We have followed *East Los Angeles* and declined to apply the *Tuck* test to intra-urbanized area moves since 1995.<sup>28</sup> We do not believe that the adoption of *Rural Radio* should change this approach because the stricter standards of *Rural Radio* apply to moves from rural to urban areas. Our view is further buttressed by the fact that there is no indication in *Rural Radio* that the Commission intended to apply these new procedures to intra-urbanized Area moves. Accordingly, we conclude that there is no need to examine Cumulus’s *Tuck* showing in this proceeding because both Tualatin and Aloha are located within the Portland, Oregon, Urbanized Area.<sup>29</sup>

10. We now must address whether the Application will result in a preferential arrangement of allotments. Cumulus’s basis for contending that grant of its Application will provide a preferential arrangement of allotments is that the population of the communities is the dispositive factor in choosing between two first local services under Priority 3. While we continue to believe that this is the correct approach for choosing between first local services that are located outside of and cannot cover more than 50 percent of an Urbanized Area, we are of the view that when the two communities are located within an Urbanized Area, our analysis should “. . . reflect more realistically the economic incentives of broadcasters”<sup>30</sup> and “. . . treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area rather than the named community of license.”<sup>31</sup> Under these circumstances and in the absence of a showing to rebut the presumption that either the move-out or move-in community is sufficiently independent to warrant a first local service priority, we believe that the appropriate comparison between two suburban communities should be under Priority 4 to determine from which community the station would be better able to serve the Urbanized Area. In this case, whether Station KNRQ-FM is licensed at Tualatin or Aloha, it will provide a 70 dBu signal over most or all of the

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<sup>26</sup> See *East Los Angeles, Long Beach, and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864, 2868 (MMB 1995), quoting *Community of License MO&O*, 5 FCC Rcd at 7096, ¶ 14 (“*East Los Angeles*”).

<sup>27</sup> *Id.* at 2869.

<sup>28</sup> See, e.g., *Burkesville, Kentucky, et al.*, Report and Order, 21 FCC Rcd 11465 (MB 2006); *Port Norris, Maryland, et al.*, Report and Order, 21 FCC Rcd 11449 (MB 2006); and *Boulder and Lafayette, Colorado*, Report and Order, 11 FCC Rcd 3632 (MMB 1996).

<sup>29</sup> In light of this determination, Hopseker’s argument regarding the sufficiency of Cumulus’s *Tuck* showing is not relevant.

<sup>30</sup> *Rural Radio*, 26 FCC Rcd at 2567, ¶ 19.

<sup>31</sup> *Id.*, ¶ 19.

Portland, Oregon, Urbanized Area. We believe that a preferential arrangement of allotments will result from a reallocation of Station KNRQ-FM to Aloha because Station KNRQ-FM will be able to provide service to a greater area and population within the Portland Urbanized Area. Specifically, there will be a gain of service to of 250,319 persons within 7,816 square kilometers and no loss of service as Station KNRQ-FM is upgrading its channel class without a change of transmitter site.<sup>32</sup> Additionally, Station KNRQ-FM will cover 100% of the Portland Urbanized Area with a 70 dBu signal whereas it currently covers approximately 90% of the Urbanized Area.<sup>33</sup>

11. Finally, we find that the Objection does not raise a substantial and material question of fact that would warrant denial of the Application. Although Hopseker contends that Station KNRQ-FM should remain in Tualatin as no change in transmitter site is proposed, we agree with Cumulus that Hopseker has not cited any rule, case, or policy to support this claim. On the contrary, we have granted change of community of license applications where there have been no changes of transmitter sites.<sup>34</sup> Further, to the extent that Hopseker suggests that Cumulus should accomplish its upgrade at its current community of license, it is established policy that another party cannot involuntarily require an applicant to specify a different community of license, class of channel, or transmitter site than was originally proposed.<sup>35</sup> Because Hopseker is not the licensee of Station KNRQ-FM and Cumulus has not consented to a change in its proposed community of license, Hopseker cannot cause a modification in Cumulus's proposal.<sup>36</sup> Accordingly, we deny the Objection and grant the Application.<sup>37</sup>

12. *Related Channel Changes.* In order to accommodate the grant of the Petition for Rule Making and the Application, we are making several related channel changes proposed in the Counterproposal. First, we are involuntarily substituting Channel 243A for Channel 251A at Seaside, Oregon, and modifying the license of Station KCYS(FM) to reflect this change.<sup>38</sup> To this end, we issued

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<sup>32</sup> See Cumulus's Counterproposal, Technical Exhibit at 7.

<sup>33</sup> See Cumulus's Counterproposal at 4.

<sup>34</sup> See, e.g., *Glasgow and Bowling Green, Kentucky*, Report and Order, 19 FCC Rcd 8477 (MB 2004) (finding that a reallocation results in a preferential arrangement of allotments without a change of transmitter site); and *Steubenville, Ohio, and Burgettstown, Pennsylvania*, Report and Order, 16 FCC Rcd 12009, 12010 (MMB 2001) (approving reallocation as a preferential arrangement of allotments without a change of transmitter site or coverage).

<sup>35</sup> See *Fishers, Lawrence, Indianapolis, and Clinton, Indiana*, Report and Order, 22 FCC Rcd 11660, 11662 (MB (2007) (dismissing a counterproposal as defective because it proposed an involuntary site change and a lower class of channel than was proposed by the rule making petitioner).

<sup>36</sup> As a related matter, Hopseker alleges that Cumulus's construction permit for Station KNRQ-FM expires on March 28, 2011, and that it should not be extended. See Objection at 4. We note, however, that, according to the Commission's Consolidated Data Base System ("CSBS") records, the original construction permit for Station KNRQ-FM was tolled pending the resolution of a petition for reconsideration, which was dismissed on January 13, 2010. As a result, the Station KNRQ-FM construction permit deadline was revised to January 16, 2013. See CDBS, File No. BPH-20070110AFH, Public Notice Comments.

<sup>37</sup> The reference coordinates for Channel 250C1 at Aloha, Oregon, are 45-31-21 NL and 122-44-45 WL.

<sup>38</sup> The reference coordinates for Channel 243A at Seaside, Oregon, are 45-57-8 NL and 123-56-14 WL.

an *Order to Show Cause* to Dave's Broadcasting Corporation, licensee of Station KCYS(FM), to show cause why its license should not be modified to specify operation on Channel 243A at Seaside in lieu of Channel 251A. Dave's Broadcasting filed no comments in response to the *Order to Show Cause* and is, therefore, deemed to have consented to the channel change.<sup>39</sup> In compliance with our *Circleville* policy,<sup>40</sup> Cumulus states that it will reimburse the licensee of Station KCYS(FM) for its reasonable expenses associated with changing its channel to Channel 250C1 at Seaside. We find that the involuntary channel change will serve the public interest by facilitating the reallocation of Station KNRQ-FM to Aloha, Oregon, and, therefore, concurrently grant the Seaside Application.

13. Second, we will substitute Channel \*243C1 for vacant but applied for Channel \*251C1, reserved for NCE use, at Madras, Oregon. Although counterproposals must protect previously filed and cut-off applications,<sup>41</sup> this channel substitution is permissible because Channel \*243C1 can be allotted to Madras at the sites specified in both of the applications and at the current allotment site for Channel \*251C1.<sup>42</sup> We will serve the applicants for Channel \*251C1 with a copy of this *Report and Order* and order that they amend their applications to specify FM Channel \*243C1 in lieu of Channel \*251C1 at the sites specified in their applications.<sup>43</sup> Third, to accommodate the allotment of Channel 227A at Gearhart, Oregon, we will substitute Channel 248C3 for vacant Channel 228C3 at Manzanita, Oregon.<sup>44</sup> Finally, because the allotments at Aloha, Gearhart, Manzanita, and Seaside, Oregon, are located within 320 kilometers (199 miles) from the U.S.-Canadian border, Canadian concurrence has been obtained with respect to these allotments.

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<sup>39</sup> Recently, Station KCYS(FM), Seaside, Oregon, filed an application to change its channel to Channel 243A (the "Seaside Application"). See File No. BPH-20110503ACG.

<sup>40</sup> *Circleville, Ohio*, Memorandum Opinion and Order, 8 FCC 2d 159 (1967) ("*Circleville*").

<sup>41</sup> 47 C.F.R. § 73.208(a)(3).

<sup>42</sup> Cf. *Cumberland, Kentucky, Weber City, Glade Spring, and Marion, Virginia*, Report and Order, 21 FCC Rcd 6431, 6432 (MB 2006), *recons. dismissed and granted on other grounds*, Memorandum Opinion and Order, 23 FCC Rcd 86, (MB 2008) (denying FM rule making petition because a proposed channel substitution did not protect the transmitter sites specified in two previously filed applications).

<sup>43</sup> The reference coordinates for Channel \*243C1 at Madras, Oregon, are 44-50-02 NL and 120-45-55 WL. The transmitter location specified in application File No. BNPED-20100226AJY is 44-55-40 NL and 120-43-40 WL. The transmitter site proposed in application File No. BNPED-20100226AIL is 44-50-02 and 120-45-55 WL.

<sup>44</sup> The reference coordinates for Channel 248C3 at Manzanita, Oregon, are 45-41-05 NL and 123-54-38 WL. Channel 228C3 at Manzanita was inadvertently removed from 47 C.F.R. § 73.202(b), the FM Table of Allotments, in MB Docket No. 05-210 but is a vacant allotment in the Media Bureau's Consolidated Data Base System. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212, 14233, Appendix A (2006). Channel 228C3 was allotted at Manzanita in MB Docket No. 02-136. See *Arlington, Oregon, et al.*, Report and Order 21 FCC Rcd 10728 (MB 2004), *recon.*, Memorandum Opinion and Order, 21 FCC Rcd 10728 (MB 2006), *review denied*, 21 FCC Rcd 13226 (2006). We will correct this clerical error in our publication of a summary of this Report and Order in the Federal Register.

14. **Conclusion and Ordering Clauses.** In view of the above, we conclude that the public interest is served by grant of the Petition for Rulemaking, the hybrid Application, and the Counterproposal. 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 September 6, 2011, 47 C.F.R. Section 73.202 IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Gearhart, Oregon	227A
Madras, Oregon	*243C1
Manzanita, Oregon	248C3

15. IT IS FURTHER ORDERED, That effective September 6, 2011, the Media Bureau's Consolidated Data Base System will reflect Channel 250C1 at Aloha, Oregon, as the reserved assignment for Station KNRQ-FM, in lieu of Channel 250C2 at Tualatin, Oregon, and Channel 243A at Seaside, Oregon, as the reserved assignment for Station KCYS(FM) in lieu of Channel 251A.

16. IT IS FURTHER ORDERED, That the Petition for Rule Making, RM-11603, filed by Black Hills Broadcasting, L.C. IS GRANTED.

17. IT IS FURTHER ORDERED, That the Informal Objection filed by Earnest R. Hopseker IS DENIED.

18. IT IS FURTHER ORDERED, That the application, File No. BMPH-20100805AKO, and the Counterproposal, RM-11631, filed by Cumulus Licensing LLC, ARE GRANTED.

19. IT IS FURTHER ORDERED, That Tool Shed PDX and Educational Broadcast Service, within 90 days of the effective date of this *Order*, amend their applications, File Nos. BNPED-20100226AJY and BNPED-20100226AIL, respectively, for new FM stations on Channel \*251C1 at Madras, Oregon, to specify Channel \*243C1 in lieu of Channel \*251C1 at the transmitter sites specified in their applications.

20. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. Section 316(a), That the license of Dave's Broadcasting Corporation, for Station KCYS(FM), Channel 251A Seaside, Oregon, File No. BLH-20000225AAK, IS MODIFIED to specify operation on Channel 243A, and that the application, File No. BPH-20110503ACG, IS GRANTED.

21. A copy of this Report and Order will be sent by Certified Mail, Return Receipt to J. Dominic Monahan, Esq., Luvaas Cobb, 777 High Street, Suite 300, Eugene, Oregon (Counsel for Black Hills Broadcasting, L.P.); Mark N. Lipp, Esq., Wiley Rein LLP, 1776 K Street, N.W. Washington, D.C. 20006 (Counsel for Cumulus Licensing LLC); Dave's Broadcasting Corporation, Post Office Box 1258, Astoria, Oregon (Licensee of Station KCYS(FM), Seaside, Oregon); Benjamin Grad, Tool Shed PDX, 5040 SE Milwaukie, Portland, Oregon 97202 (Applicant for Channel \*251C1 at Madras, Oregon); Educational Broadcast Service, 3084 SE 30th Avenue, Albany, Oregon 97322 (Applicant for Channel \*251C1 at Madras, Oregon); and Earnest R. Hopseker, 4524 132nd Ave. SE, Bellevue, WA 98006.

22. A filing window period for Channel 227A at Gearhart, 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*.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez  
Assistant Chief, Audio Division  
Media Bureau