

**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, FM Broadcast Stations (Snowflake, Arizona; Millerton, Oklahoma; Powers, Oregon; Mount Enterprise and Paint Rock, Texas; Hardwick, Vermont; and Meeteetse, Wyoming) |) | MB Docket No. 21-502 |

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2023

Released: April 11, 2023

By the Chief, Audio Division, Media Bureau:

1. The Audio Division (“Division”) has before it a Petition for Reconsideration (Petition)¹ filed on behalf of Shire and Shore Communications (“SSC”), directed to the *Report and Order*² issued in this proceeding, which deleted six vacant allotments in various communities in Oklahoma, Oregon, Texas, Vermont and Wyoming. No comments or oppositions were filed in response to the Petition. For the reasons discussed below, we amend the FM Table of Allotments, section 73.202(b) of the Commission’s rules,³ by reinstating Channel 290A at Hardwick, Vermont.

2. **Background.** The Division, on its own motion, proposed the deletion of Channel 259C2 at Snowflake, Arizona; Channel 265C2 at Millerton, Oklahoma; Channel 293C2 at Powers, Oregon; Channel 279A at Mount Enterprise, Texas; Channel 296C3 at Paint Rock, Texas; Channel 290A at Hardwick, Vermont; and Channel 259C at Meeteetse, Wyoming.⁴ All of these allotments were offered in previous FM auctions and received no bids. The *Notice* stated that interested parties must file comments expressing an interest in these vacant allotments to prevent their removal, and provide an explanation as to why they did not participate in our previous competitive bidding process.⁵ In response to the *Notice*, Estrella Broadcasting, LLC (Estrella) filed comments expressing an interest in Channel 259C2 at Snowflake, Arizona, stating that it intends to bid on it in a future auction and has access to existing facilities with the necessary approval to build the station promptly. No other comments were received in response to the *Notice*.

3. In the *Report and Order*, the Division noted the Commission’s policy of refraining from deleting an FM allotment where a *bona fide* expression of interest exists, absent a compelling reason to do

¹ Petition for Reconsideration of Shire and Shore Communications, MB Docket No. 21-502 (submitted June 16, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10616174757277>; *Petition for Reconsideration of Action in Proceeding*, Public Notice, Report No. 3193 (MB Feb. 16, 2023).

² *Snowflake, Arizona et al.*, Report and Order, DA 22-525 (MB May 13, 2022). *See also Snowflake, Arizona et al.*, Report and Order, 87 Fed. Reg. 31433 (May 5, 2022).

³ 47 C.F.R. § 73.202(b).

⁴ *Snowflake, Arizona et al.*, Notice of Proposed Rulemaking, 31 FCC Rcd 18149 (MB Dec. 23, 2021) (*Notice*). *See also Snowflake, Arizona et al.*, Notice of Proposed Rulemaking, 87 Fed. Reg. 3487 (Jan. 24, 2022).

⁵ *See Notice*, para. 2.

so.⁶ Accordingly, the Division stated that it would not delete Channel 259C2 at Snowflake, Arizona, because Estrella filed a *bona fide* expression of interest for the allotment.⁷ The Division stated that it would delete the other vacant allotments from the FM Table of Allotments because no *bona fide* expressions of interest were filed.⁸

4. In the Petition, SSC admits its failure to file comments expressing an interest in Channel 290A at Hardwick, Vermont (MM-FM325-A) by the comment deadline in this proceeding.⁹ However, it remains committed to bidding on this allocation in a future auction should the allocation be restored and to promptly construct and operate the facility if it is the winner of the auction.¹⁰ SSC explains that the economic effects of the COVID pandemic affected its finances, making a bid on the Hardwick allocation financially impossible during the most recent commercial FM auction in 2021.¹¹ SSC states that the aftereffects of the pandemic also affected its ability to promptly reply to the *Notice*.¹² SSC asserts that its financial health has recovered and requests the Commission to consider its late-filed expression of interest in the Channel 290A allotment at Hardwick, Vermont.¹³

5. **Discussion.** We accept SSC's late-filed *bona fide* expression of interest because the proceeding is uncontested and no prejudice would occur to other parties.¹⁴ We therefore grant the Petition by reinstating Channel 290A at Hardwick, Vermont.

6. **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 CFR sections 0.61, 0.204(b) and 0.283, IT IS ORDERED that effective May 26, 2023, the FM Table of Allotments, 47 CFR section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

| <u>Community</u> | <u>Channel No.</u> |
|-------------------|--------------------|
| Hardwick, Vermont | 290A |

⁶ See *Report and Order*, para. 4. See also, 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 its retention); *Enfield, New Hampshire*; *Hartford and White River Junction, Vermont*; and *Keeseville and Morrisonville, New York*, Memorandum Opinion and Order, 26 FCC Rcd 798 (2011).

⁷ See *Report and Order*, para. 4.

⁸ *Id.* at paras. 4-5 (stating that Channel 265C2 at Millerton, Oklahoma; Channel 293C2 at Powers, Oregon; Channel 279A at Mount Enterprise, Texas; Channel 296C3 at Paint Rock, Texas; Channel 290A at Hardwick, Vermont; and Channel 259C at Meeteetse, Wyoming would be deleted effective June 27, 2022, because no *bona fide* expressions of interest were filed).

⁹ See Petition. The deadline for filing comments expressing an interest in the vacant allotments was February 14, 2022. See *Notice*. SSC filed its comments on April 8, 2022. See Comment of Shire and Shore Communications, LLC, MB Docket No. 21-502 (submitted Apr. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10408186454942>. SSC then timely filed the instant Petition consistent with section 1.429 of the Commission's rules. See 47 CFR § 1.429(a), (d) (Any interested party may petition for reconsideration of a final decision in a proceeding... and shall file such petition for reconsideration and any supplement thereto within 30 days from the date of the public notice of such action).

¹⁰ See Petition.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1998), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd. sub non. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990).

7. IT IS FURTHER ORDERED that the Commission will send a copy of this Memorandum Opinion and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

8. The window period for filing applications for Channel 290A at Hardwick, Vermont will be announced by the Commission in the near future.

9. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Shire and Shore Communications IS GRANTED.

10. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Dana Bradford, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau