

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

MM Docket No. 88-28

In the Matter of

Amendment of Section 73.202(b), RM-5896
Table of Allotments, RM-6345
FM Broadcast Stations.
(Weed and Mount Shasta,
California)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1990;

Released: July 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 3 FCC Rcd 663 (1988), issued in response to a petition for rule making filed on behalf of Florence M. Gaskey ("Gaskey"), licensee of Station KWHO(FM), Channel 265A, Weed, California, proposing the substitution of Channel 272C1 for Channel 265A at Weed and modification of the license accordingly. Gaskey filed supporting comments. Shasta Cascade Broadcasting Corp ("SCBC"), licensee of Station KEDY(FM), Channel 237A, Mt. Shasta, California, filed a counterproposal² requesting the substitution on Channel 272C1 for Channel 237A, and concurrent modification of its license. Gaskey filed opposition comments to SCBC's counterproposal. Gaskey and SCBC each filed reply comments. Gaskey also filed a supplemental statement.³

2. In response to the *Notice*, SCBC counterproposed the use of Channel 272C1 at Mt. Shasta and modification of its license for Station KEDY(FM) to specify the higher powered channel. The distance between the reference coordinates used for Weed and Mt. Shasta is 5.6 kilometers,⁴ whereas 245 kilometers is required in this instance.⁵ Thus, the proposals are mutually exclusive. In support of its proposal, SCBC questions the ability of Gaskey to provide line-of-sight coverage to Weed from the preferred site specified for Station KWHO(FM). Further, SCBC questions whether a station that has been inoperative for an extended period, like KWHO(FM), can be modified.⁶

3. Gaskey filed reply comments to SCBC's counterproposal, remarking that the Commission granted Station KWHO(FM) authority to remain silent until an acceptable transmitter site could be secured from which a 70 dBu signal could be delivered over Weed. In this regard, Gaskey states that a modification application specifying a new transmitter location for Station KWHO(FM) to alleviate the minimum signal intensity concerns was accepted for filing (BPH-860305IA).⁷ Moreover, Gaskey advises that equivalent Channel 300C1 can be allotted to Mt. Shasta at the present site of Station KEDY(FM) to satisfy SCBC's expression of interest.

4. SCBC's reply comments reiterate its earlier comments regarding the status of Station KWHO(FM) and the site availability issue. Although SCBC attempts to introduce matters related to Gaskey's alleged intentions in pursuing the Weed modification, they are not appropriate for consideration at the rule making level, and will not be considered. SCBC asserts that on a comparative basis, Mt. Shasta should receive Channel 272C1 since it is the larger of the two communities, and urges that additional channels are available to Mt. Shasta in the event there are other interests in that community.

DISCUSSION

5. The Weed and Mt. Shasta proposals are mutually exclusive since they are separated by less than the 245 kilometers required between Class C1 co-channel allotments. Moreover, each proponent seeks a nonadjacent modification. Section 1.420 of the Commission's Rules states that a station may be upgraded on a nonadjacent higher-powered channel only where no other party expressed an interest in the use of the channel, or if there is an additional equivalent channel available for use by such other interested parties. In the instant case, as announced in the *Notice*, Gaskey advised that additional equivalent channels are available in the event expressions of interest in the Weed proposal were advanced.

6. In response to SCBC's counterproposal requesting the use of Channel 272C1 at Mt. Shasta, it has been demonstrated that Channel 300C1 is available at the preferred site of Station KEDY(FM). Although SCBC expressed a preference for Channel 272C1, it should note that paragraph 3 of the Appendix to the *Notice* in this proceeding advised that filing of a counterproposal may result in the allotment of channels of an equivalent class to those requested. Also, the Commission may allot a different channel of the same class on its own motion in the course of a rule making proceeding to ensure the most efficient use of the spectrum. See *Selma and Georgianna, AL*, 4 FCC Rcd 7584 (1989); *Williston and Micanopy, FL*, 50 RR 2d 1425 (1982). Although the Public Notice announcing the filing of SCBC's counterproposal did not state that it sought modification of its license for Station KEDY(FM) to a nonadjacent higher-powered channel, and did not advise interested parties that they could file competing expressions of interest, we have determined that Channel 276C1 is also available to Mt. Shasta as an equivalent channel.⁸ In view of the foregoing, both the Weed and Mt. Shasta proposals can be accommodated without the need for a community comparison.

7. Although SCBC questioned Gaskey's ability to provide a 70 dBu signal over Weed from her preferred site for Channel 272C1, we note that the construction permit issued to Gaskey for Station KWHO(FM) to operate on Channel 265A is at the same site. Therefore, and in view of the fact that SCBC has not demonstrated to the contrary, it must be concluded that Gaskey's preferred site is considered technically acceptable to provide adequate service to Weed.

8. We believe the public interest would be served by substituting Channel 272C1 for Channel 265A at Weed, California, and by substituting Channel 300C1 for Channel 237A at Mt. Shasta, California, since each could provide a first wide coverage area FM service to the respective communities. Therefore, and in accordance

with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the licenses of Station KWHO(FM) to specify operation on Channel 272C1 in lieu of Channel 265A at Weed, California, and Station KEDY(FM) to specify operation on Channel 300C1 in lieu of Channel 237A at Mt. Shasta, California. As indicated, *supra*, Channel 272C1 can be allotted to Weed at the currently authorized site of Station KWHO(FM). Channel 300C1 can be allotted to Mt. Shasta at the licensed site specified for Station KEDY(FM).⁹

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) 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 **September 4, 1990**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Mt. Shasta, California	300C1
Weed, California	272C1

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Shasta Cascade Broadcasting Corporation for Station KEDY(FM), IS MODIFIED effective **September 4, 1990**, to specify operation on Channel 300C1 in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Florence M. Gaskey for Station KWHO(FM), IS MODIFIED effective **September 4, 1990**, to specify operation on Channel 272C1 in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

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

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

¹ The community of Mt. Shasta, California, has been added to the caption.

² Public Notice of the counterproposal was given April 22, 1989, Report No. 1726.

³ Gaskey's statement was filed after the period specified for filing comments in the proceeding. The Commission's Rules do not contemplate the filing of pleadings beyond the comment period, unless specifically requested. However, the comment was served on SCBC and merely contained information of which the Commission would take official notice in any event. Therefore, it has been accepted.

⁴ The coordinates of the authorized site for Station KWHO(FM), Weed, are 41-21-12 and 122-15-35, and for Station KEDY(FM), Mt. Shasta, 41-19-09 and 122-18-35.

⁵ The spacing requirements are based on the separation requirements prior to the revision of the Commission's Rules in MM Docket No. 88-375, 4 FCC Rcd 6375 (1989), which, *inter alia*, increased the maximum power for Class A facilities to 6 kW and adjusted the minimum distance spacing requirements accordingly. See 47 CFR § 73.213(c).

⁶ Station KWHO(FM) had been silent pursuant to Commission authority, but is presently operating pursuant to automatic program test authority. Gaskey has filed an application (BLH-891127KB) for a license to cover her construction permit (BPH-860305IA), specifying the new transmitter site for Station KWHO(FM).

⁷ Coordinates at the construction permit site for Station KWHO(FM) are those under consideration herein at 41-21-12 and 122-15-35.

⁸ Coordinates for Channel 276C1 at Mt. Shasta are 41-08-18 and 122-37-28. However, since we did not receive any other expressions of interest in an allotment at Mt. Shasta, we will not allot Channel 276C1. Rather, it may be requested in the context of a new rule making proceeding.

⁹ Coordinates for Channel 300C1 at Mt. Shasta are 41-19-09 and 122-18-35.