

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

MM Docket No. 91-128

In the Matter of

Amendment of Section 73.202(b), RM-7694
Table of Allotments,
FM Broadcast Stations.
(Holbrook, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 3, 1992; Released: February 11, 1992

By the Assistant Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 6 FCC Rcd 2454 (1991), issued in response to a petition filed on behalf of Navajo Broadcasting Company, Incorporated ("petitioner"), permittee of Station KZUA(FM), Channel 221A, Holbrook, Arizona, proposing the substitution of Channel 221C1 for Channel 221A and modification of its permit to specify operation on the higher powered channel. Petitioner filed supporting comments in response to the *Notice*. Michael T. McKenna ("McKenna") filed comments and an unacceptable counterproposal.¹ Petitioner and Tusayan Broadcasting Company, Inc. ("TBC"), permittee of Station KSGC(FM), Channel 221A, Tusayan, Arizona, each filed reply comments.²

2. While petitioner's initial comments reiterate its intention to apply for Channel 221C1, its responsive comments state a willingness to accept lower class Channel 221C2 to accommodate the Grand Canyon Village counterproposal, in order to expedite the resolution of this

¹ McKenna requests the allotment of Channel 221C2 to Grand Canyon Village, Arizona, as a first local aural transmission service. McKenna also requests the substitution of Channel 221C2 in lieu of proposed Channel 221C1 at Holbrook, as well as the substitution of Channel 232A for Channel 221A at Tusayan, Arizona, and modification of the construction permit for Station KSGC(FM), Tusayan, to accommodate his proposal. McKenna's proposal is technically and procedurally defective and was not placed on public notice.

Although McKenna signed the counterproposal and provided an address, he failed to include an affidavit verifying that the statements contained in his comments were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any documents filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, a pleading may be returned as unacceptable. See *Monroeville, AL*, 5 FCC Rcd 7027 (1990). Section 1.402(b) of the Rules concerning rule making proceed-

proceeding. However, since we have rejected McKenna's request (see note 1, *supra*), and Channel 221C1 is technically acceptable, we need not consider petitioner's proposed solution. We believe the public interest would be better served by allotting the higher class channel to Holbrook, consistent with the petitioner's original allotment request. We also believe that our determination may be more conducive to fulfilling the petitioner's desire to provide an improved service to Holbrook, and that petitioner would not have agreed to seek the lower class channel in the absence of McKenna's request.³

3. As indicated in the *Notice*, Channel 221C1 can be allotted to Holbrook consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules without the imposition of a site restriction.⁴ Additionally, as previously stated in the *Notice*, there will be no overlap of the proposed 1 mV/m contour of Station KZUA(FM) at Holbrook with the Grade B contour of any Channel 6 television station.

4. In view of the above, we believe the public interest would be served by substituting Channel 221C1 for Channel 221A at Holbrook, Arizona, since it would provide an expanded coverage area FM service to the community. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the construction permit of Station KZUA(FM) to specify operation on Channel 221C1 in lieu of Channel 221A, as requested.

5. 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 **March 27, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Holbrook, Arizona	221C1

6. IT IS FURTHER ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Navajo Broadcasting

ings puts petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification.

² TBC claims that although McKenna's comments contain a certificate of service indicating compliance with the service requirements on the affected parties, the counterproposal was not served on TBC. Rather, TBC advises that it was apprised of the filing in an informal discussion with the Commission's staff. Therefore, TBC opposes any consideration of McKenna's proposal since, if adopted, it would impinge upon TBC's modification plans for Station KSGC(FM) at Tusayan. TBC's opposition is moot in light of our rejection of McKenna's counterproposal. However, we note that McKenna did not respond to TBC's allegation.

³ However, in the event petitioner determines that a lower class channel would accomplish its modification goal at Holbrook, it may seek to downgrade Channel 221 in connection with its application to be filed for the facility. See § 73.3573(a)(1) of the Commission's Rules.

⁴ Coordinates used for Channel 221C1 at Holbrook are 34-54-12 and 110-09-48.

Company, Incorporated (BPH-890118MF), for Station KZUA(FM), IS MODIFIED to specify operation on Channel 221C1 in lieu of Channel 221A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the permittee 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.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Navajo Broadcasting Company, Incorporated, permittee of Station KZUA(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

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

9. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau