

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

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Leavenworth, Othello and East Wenatchee,
Washington)

MM Docket No. 95-14
RM-8552.

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 23, 1996;

Released: August 30, 1996

By the Chief, Allocations Branch:

1. At the request of Ronald A. Murray, d/b/a Murray Broadcasting ("Murray" or "petitioner"), permittee of Station KLVH(FM), Channel 249A, Leavenworth, Washington, the Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 10 FCC Rcd 983 (1995), proposing the substitution of Channel 266A for Channel 249A at Leavenworth, and the modification of Station KLVH(FM)'s construction permit accordingly.¹ To accommodate the substitution, petitioner also proposes the downgrade of Channel 248C1 to Channel 248C3 at Othello, Washington, and the modification of Station KZLN-FM's construction permit accordingly; and the substitution of Channel 249A for Channel 266A at East Wenatchee, Washington, and the modification of Station KYSN(FM)'s license accordingly.² Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. P-N-P Broadcasting Service, Inc. ("P-N-P") also filed comments in support of the proposal.

¹On May 21, 1996, Station KLVH(FM) was granted an extension of its Special Temporary Authorization ("STA") (File No. 940822WW) to operate on Channel 266A until resolution of the instant rule making proceeding. The STA expires on November 21, 1996.

²An application (File No. BALH-941116GT) to assign Station KYSN(FM) at East Wenatchee from Sunbrook Wenatchee, L.P. to Sunbrook Communications, Inc., was granted on December 28, 1994, and consummated on March 1, 1995.

2. Originally, in MM Docket 92-242, Murray petitioned for the allotment of Channel 249A at Leavenworth, Washington. As indicated in the Report and Order³ allotting Channel 249A to Leavenworth, Channel 249A is short-spaced to the licensed operation of Station KYSN(FM), Channel 249A, East Wenatchee, Washington and is dependent upon Station KYSN(FM) moving to Channel 266A as ordered in the Report and Order in MM Docket 91-114, 6 FCC Rcd 6476 (1991). Accordingly, Murray's construction permit was conditioned so that it could not operate on Channel 249A at Leavenworth until Station KYSN(FM), East Wenatchee, had moved from Channel 249A to Channel 266A and had commenced operations.

3. Murray has been unable to commence operation on Channel 249A at Leavenworth because Station KYSN(FM) at East Wenatchee, has not moved from Channel 249A to Channel 266A as required by the Report and Order in MM Docket 91-114. That Report and Order required Station KYSN(FM) to change channels to accommodate an upgrade by Station KZLN-FM, Othello, Washington, from Channel 248C3 to Channel 248C1 and also required the licensee of Station KZLN-FM to reimburse Station KYSN(FM) for the reasonable costs related to the channel change. However, since the Report and Order in the Othello proceeding became effective on December 23, 1991, the Othello station has not filed an application to implement the upgrade and has not reimbursed Station KYSN(FM) for the costs of changing channels.⁴

4. To remedy this situation, Murray filed the instant rulemaking petition seeking to substitute Channel 266A for Channel 249A at Leavenworth, to downgrade Station KZLN-FM, Othello, Washington, from Channel 248C1 to Channel 248C3, and to substitute Channel 249A, on which Station KYSN(FM) is currently operating, for Channel 266A at East Wenatchee and to modify the authorizations accordingly.

5. In response to the Order to Show Cause, P-N-P filed comments in support of the proposal consenting to the downgrade of its Station KZLN-FM from Channel 248C1 to Channel 248C3 at Othello, Washington, and to the substitution of Channel 249A for Channel 266A at East Wenatchee, Washington. P-N-P also states that Station KZLN-FM has abandoned its interest in

³ 8 FCC Rcd 850 n.1 (1993).

⁴ Indeed, the Commission sent P-N-P, licensee of Station KZLN-FM, Othello, Washington, a letter on June 10, 1993, advising that unless it filed an FCC Form 301 application for a construction permit for Class C1 facilities within 30 days, it could result in P-N-P being made a party to an allocation rule making seeking to downgrade the allotment. P-N-P was also advised that the application would take precedence if filed before any conflicting rule making was initiated. If filed after a rule making petition, P-N-P was informed that the application would be subject to the outcome of the rule making proceeding. P-N-P did not file a Form 301 to upgrade Station KZLN-FM to Class C1 facilities. Furthermore, although Station KYSN(FM)'s license was modified to specify operation on Channel 266A at East Wenatchee, the station is still operating on Channel 249A, thereby precluding petitioner from conducting program tests on Channel 249A at Leavenworth.

Class C1 facilities at Othello because such an upgrade is no longer feasible. P-N-P asserts that the proposal is in the public interest since it would allow Station KLVH(FM) to provide Leavenworth with its first local aural transmission service, and would have no impact on the current facilities of Stations KZLN-FM and KYSN(FM). We note that Sunbrook Communications, Inc., licensee of Station KYSN(FM), did not respond to the Order to Show Cause, and therefore, pursuant to Section 1.87 of the Commission's Rules, is deemed to have consented to the proposed modification.

6. We believe the public interest would be served by substituting Channel 266A for Channel 249A at Leavenworth, Washington, since it would provide the community with its first local aural transmission service, and would allow Station KLVH(FM) to operate without potential interference. To accommodate the substitution, we will downgrade Channel 248C1 to Channel 248C3 at Othello, Washington, and substitute Channel 249A for Channel 266A at East Wenatchee, Washington. An engineering analysis has determined that Channel 266A can be allotted to Leavenworth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized site.⁵ Additionally, Channel 248C3 can be allotted to Othello without the imposition of a site restriction at Station KZLN-FM's authorized site;⁶ and Channel 249A can be allotted to East Wenatchee without the imposition of a site restriction at Station KYSN(FM)'s authorized site.⁷ As requested, we also modify the construction permits of Stations KLVH(FM) and KZLN-FM, and the license of Station KYSN(FM) to specify operation on Channels 266A, 248C3, and 249A, respectively. Since Leavenworth, Othello, and East Wenatchee are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

7. Accordingly, pursuant to the authority found 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 October 15, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Leavenworth, Washington	266A

⁵The coordinates for Channel 266A at Leavenworth are North Latitude 47-35-32 and West Longitude 120-38-35.

⁶The coordinates for Channel 248C3 at Othello are North Latitude 46-45-55 and West Longitude 119-16-49.

⁷The coordinates for Channel 249A at East Wenatchee are North Latitude 47-22-52 and West Longitude 120-17-16.

Othello, Washington	248C3
East Wenatchee, Washington	249A

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Ronald A. Murray, d/b/a Murray Broadcasting, for Station KLVH(FM), Leavenworth, Washington, IS MODIFIED to specify operation on Channel 266A in lieu of Channel 249A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KLVH(FM)'s construction permit, BPH-930423MF, except the channel as specified above. Any changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301), specifying the new facility.
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-930423MF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of P-N-P Broadcasting Service, Inc., for Station KZLN-FM, Othello, Washington, IS MODIFIED to specify operation on Channel 248C3 in lieu of Channel 248C1, subject to the following conditions:

- (a) Nothing in contained herein shall be construed as authorizing any change in Station KZLN-FM's construction permit, BMPH-900917IH, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301), specifying the new facility.
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BMPH-900917IH, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Sunbrook Communications, Inc., for Station KYSN(FM), East Wenatchee, Washington, IS MODIFIED to specify operation on Channel 249A in lieu of Channel 266A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KYSN(FM)'s license, BLH-811009AK, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301), specifying the new facility.
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-811009AK, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Ronald A. Murray
Murray Broadcasting
P.O. Box 37
Leavenworth, Washington 98826
(Permittee of Station KLVH(FM))

Duane J. Polich, President
P-N-P Broadcasting Service, Inc.
P.O. Box 2869
Othello, Washington 99344-2869
(Permittee of Station KZLN-FM)

Sunbrook Communications, Inc.
N. 1212 Washington Street, Suite 124
Spokane, Washington 99201
(Licensee of Station KYSN(FM))

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

13. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau