

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

In the matter of)	
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Amendment of Section 73.202(b))	MM Docket No. 91-09
Table of Allotments)	RM-7423
FM Broadcast Stations)	
(Greenfield and Del Rey Oaks, California))	

REPORT AND ORDER (Proceeding Terminated)

Adopted: September 13 , 1996

Released: October 4, 1996

By the Chief, Allocations Branch:

1. At the request of Troposphere Broadcasting Limited Partnership ("petitioner"), permittee for unbuilt Station KSEA(FM) (formerly KQKZ(FM)), Greenfield, California, the Commission has before it the *Notice of Proposed Rule Making* ("Notice"), 6 FCC Rcd 631 (1991). The *Notice* proposed the substitution of Channel 300A for Channel 300B at Greenfield, California, the reallocation of Channel 300A to Del Rey Oaks, California, as the community's first local transmission service, and the modification of Station KSEA(FM)'s construction permit to specify Del Rey Oaks as the station's community of license. Petitioner filed supporting comments and reply comments.¹ AdComm IV, Inc. ("AdComm"), licensee of Stations KLAU(AM), Capitola, and KMBY-FM, Seaside, California, and Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), licensee of Station KSUR-FM (now KLOK-FM), Greenfield, California, filed opposing comments and reply comments.²

2. In support of its proposal, petitioner states that the reallocation of Channel 300A from Greenfield to Del Rey Oaks is in the public interest because it will not deprive Greenfield of its sole transmission service, it will provide Del Rey Oaks with its first local transmission service,

¹ Petitioner also filed a "Motion for Leave to File Late-filed Supplementary Comments," which both AdComm and Mt. Wilson opposed. In the interest of administrative finality, these unauthorized supplementary comments were not considered.

² Mt. Wilson was superseded in interest by Norte Broadcasting, Inc. pursuant to an application (File No. BAPLH-940921GJ) for assignment of construction permit and license granted on November 16, 1994, and consummated on January 12, 1995. AdComm was superseded in interest by Atmor Properties, Inc. pursuant to an application (File Nos. BAL-931210GE and BALH-931210HA) for assignment of the licenses of Stations KLAU(AM) and KMBY-FM, granted on February 10, 1994, and consummated on April 26, 1994.

and the proposed reallocation would enable Station KSEA to increase its population served from 200,458 persons within 7,206 square kilometers to 250,466 within only 1,181 square kilometers. Troposphere therefore asserts that this proposal will result in a preferential arrangement of allotments and a new service benefit to the communities involved.

3. In the *Notice*, we stated that, based on the information then before us, we were unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Specifically, we noted that Del Rey Oaks is within the Seaside-Monterey Urbanized Area as defined by the United States Census, and questioned whether that community is deserving of a first local service preference or whether Del Rey Oaks should be credited with all of the aural services authorized to the Seaside-Monterey Urbanized Area. Petitioner was requested to submit information sufficient to show that Del Rey Oaks is deserving of such a preference as claimed. Pending evaluation of this information, we tentatively proposed the requested substitutions while observing that we were unable to conclude that petitioner's proposal would serve the public interest.

4. In its comments, petitioner reiterates its support for the proposal as set forth in the *Notice*. In addition, it states that Del Rey Oaks was incorporated as a city in 1953 and has a growing population. It asserts that the city of Del Rey Oaks has its own police force and an elected mayor and city council. Petitioner also claims that the community maintains a city hall and several parks, and contains a number of business establishments and a church. Thus, petitioner maintains that Del Rey Oaks is a community for allotment purposes and deserving of a first local transmission service.

5. Furthermore, petitioner claims that its proposal will result in a preferential arrangement of allotments. Despite the proposed reduction in facilities, petitioner asserts that Station KSEA will serve more persons as a Class A facility than as currently authorized as a Class B station. In addition, it contends that the lower spacing requirements attendant to the allotment of a Class A station at Del Rey Oaks will make possible three future Class A allotments (two of which could provide first service to their communities with the third allotted to Greenfield) that are not precluded by the current Class B allotment at Greenfield. Even if a new service is not established at Greenfield, petitioner asserts that that community is still within the 1mV/m contours of five FM stations and is not an underserved community.

6. In opposition, AdComm states that the change of community would not result in a preferential arrangement of allotments. Although it concedes that Del Rey Oaks, as an incorporated city, would be considered a community for allotment purposes, AdComm asserts that Del Rey Oaks does not qualify as an independent community from its Urbanized Area under the factors delineated in *RKO General (KFRC)*, 5 FCC Rcd 3222(1990) ("*KRFC*") and *Faye and*

Richard Tuck, 3 FCC Rcd 5374 (1988) ("*Tuck*").³ AdComm notes that the Seaside-Monterey Urbanized Area is already well-served, and does not need an additional radio outlet. Adcomm also questions the *bona fides* of petitioner because soon after it acquired the construction permit at Greenfield, petitioner indicated an interest in moving the station closer to Seaside-Monterey.⁴

7. In its opposition to the proposal, Mt. Wilson states that its interest in this matter derives from its operation of the only other broadcast facility at Greenfield, California. Mt. Wilson believes that allowing petitioner to change community would leave its station as the sole local service to the community, and thus unable to change its community of license at some point in the future. Mt. Wilson opposes the change of community on the ground that Del Rey Oaks does not have needs for local transmission service that are separate from the needs of the Seaside-Monterey Urbanized Area. Mt. Wilson claims that based on its research, Del Rey Oaks does not provide enough community services to its citizens to warrant a first local service credit under the FM allotment priorities.

8. **Discussion.** We agree that the petition for rule making proposing the change of community should be denied. Del Rey Oaks, as an incorporated city with elected officials, businesses, a church, and a Moose Lodge, is clearly a community for allotment purposes. However, examining the community pursuant to the criteria delineated in *KFRC* and *Tuck* leads us to the conclusion that the community is not sufficiently independent of its Urbanized Area to warrant an allotment. Looking at the first criterion, signal population coverage, the station would cover 100% of the Urbanized Area. Looking at the second criterion, size and proximity of the community relative to the main city of the Urbanized Area, Del Rey Oaks is directly between and contiguous with the two central cities of Seaside and Monterey. Del Rey Oaks has a 1990 U.S. Census population of 1,661, Seaside has a population of 38,901 and Monterey has a population of 31,954 persons.

9. With respect to the third criterion, independence from the central cities, it appears that Del Rey Oaks is interdependent with the larger Urbanized Area of Seaside-Monterey.⁵ Although

³ *KFRC* and *Tuck* clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," *i.e.*, the degree to which the proposed station could provide service to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the Urbanized Area of the city. Third, the Commission examines the interdependence of the suburban community with the central city. See *KFRC*, 5 FCC Rcd at 3223; *Tuck*, 3 FCC Rcd at 5377, 78.

⁴ AdComm presents no substantiation for its claim that petitioner has not acted in good faith regarding this station, and we will not consider this allegation further.

⁵ There are eight factors the Commission considers relevant to this inquiry, namely, (1) the extent to which community residents work in the larger metropolitan area rather than the specified community; (2) whether the smaller community has its own newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or

it is incorporated, has elected government, and a police department, the mayor and city-council and police are all part-time positions. The city does not collect taxes. It has only one church, one known civic organization and limited business activity. The majority of residents work in the larger surrounding communities. It has no post office, zip code, or telephone exchange, and no newspaper or telephone book. All of these are provided by or shared with communities in the surrounding Urbanized Area. Del Rey Oaks also depends on the other cities in the Urbanized Area or the county to provide hospital, fire protection, schools, libraries, trash collection and water service. There is no documentation of any local transportation service provided by Del Rey Oaks, but we take official notice of the fact that Del Rey Oaks is part of the Monterey-Salinas Transit System. We also assume that Del Rey Oaks is part of the Monterey-Salinas-Santa Cruz Arbitron advertising market (ranked 77th in the nation). Accordingly, this case squarely fits within our policy established in *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community MO&O")* 5 FCC Rcd 7094, 7096 (1990), affirming 4 FCC Rcd 4870 (1989). We thus attribute all of the services of the Seaside-Monterey Urbanized Area to the community of Del Rey Oaks and consider this proposal pursuant to FM Allotment Priority 4, "other public interest matters,"⁶ rather than Priority 3 "first local service."

10. We further conclude, after comparing the communities, that this proposal would not result in a preferential arrangement of allotments.⁷ Greenfield, population 7,464 persons, has only one other local radio station, Station KLOK-FM, and the Seaside-Monterey Urbanized Area is served by a total of 14 local radio stations,⁸ which would be attributed to Del Rey Oaks according to the above analysis.⁹ Accordingly, this case presents, pursuant to FM Allotment Priority 4, a comparison of a 15th service to Del Rey Oaks, and a second local, and first competitive, service to Greenfield. While we agree that the proposal would result in an additional

separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or its own zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. See *KFRC*, 5 FCC Rcd at 3223; *Tuck*, 3 FCC Rcd at 5378.

⁶ The FM priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

⁷ Petitioner's suggestion that the change of community would enable three new Class A allotments to be made at the communities of Greenfield, Harmony, and Pinedale, California, does not change the outcome of our decision.

⁸ We disagree with Adcomm that all of the 25 stations within the Monterey-Salinas-Santa Cruz Arbitron radio market should be credited to the Seaside-Monterey Urbanized Area. To include the entire market would be overinclusive of stations which would not provide a signal to Del Rey Oaks.

⁹ We also note that an additional six stations licensed to communities outside the Urbanized Area place a 60dBu signal, which is primary service, over the area encompassing Del Rey Oaks.

primary service to a number of persons, it would require Station KSEA(FM) to downgrade, and those persons in the gain area are already in an area which is abundantly well-served.¹⁰

11. Accordingly, IT IS ORDERED that the petition for rule making filed by Troposphere Broadcasting Limited Partnership IS DENIED.

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

13. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau (202)418-2130.

FEDERAL COMMUNICATIONS COMMISSIONS

John A. Karousos
Chief, Allocations Branch
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Mass Media Bureau

¹⁰ Station KSEA(FM) at Greenfield when built, would represent a fifth reception service to some 8,136 persons and a fourth reception service to some 3,687 persons.