

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

MM Docket No. 89-591

In the Matter of

Amendment of Section 73.202(b), RM-7079
Table of Allotments, RM-7316
FM Broadcast Stations.
(Cottage Grove and
Bend, Oregon)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 24, 1991;

Released: July 8, 1991

By the Chief, Allocations Branch:

1. At the request of Susan M. Ciborsky ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 8 (1990), proposing the allotment of Channel 288C1 to Cottage Grove, Oregon, as the community's first local FM service.² Petitioner and Chiang Communications ("Chiang") filed comments. The University of Oregon Foundation ("Foundation") filed a counterproposal requesting the substitution of Channel 289C1 for Channel 289C2 at Bend, Oregon, and the modification of its license for Station KQAK (formerly KWBX) to specify the higher powered channel, and the allotment of Channel 288A to Cottage Grove in lieu of Channel 288C1.³ Diane C. O'Renick ("O'Renick"), Owner/Manager, Station KNND, Cottage Grove, filed reply comments.⁴

2. Petitioner and Chiang each state their intention to apply for Channel 288C1, if allotted to Cottage Grove. Foundation, in its counterproposal, states that Station KQAK, Bend, is the only wide area coverage noncommercial educational facility in Bend or Deschutes County. Further, it states that upgrading Station KQAK will enable the station to provide increased 1 mV/m service to more than 78,000 persons. It notes that the station has been forced to temporarily suspend operation because

of insufficient revenue from its listeners.⁵ However, the Foundation contends that an upgraded Station KQAK could provide improved service to the population centers within Deschutes County and thus enhance the station's ability to attract the listener base necessary to financially support the station. Finally, Foundation submits that petitioner's desire to provide Cottage Grove with a first local FM service can be accommodated if Channel 288A instead of Channel 288C1 is allotted there.

3. In response to the counterproposal, O'Renick filed reply comments stating that she would apply for Channel 288A, if allotted to Cottage Grove. She goes on to state that given the market size and economics of the area, it is her belief that a Class C1 station would be more expensive than the area could support.

4. Based on the record before us, we believe that the public interest would be served by providing Cottage Grove with its first local FM service and Bend with an expanded FM radio service. In this regard, a staff engineering study shows that there are no alternate Class C1 channels available for allotment to either Bend or Cottage Grove. However, a comparison of the two requests is not necessary because a valid expression of interest in use of Channel 288A at Cottage Grove has been received. Although petitioner and Chiang have expressed an intention to apply for the C1 channel at Cottage Grove, neither party has made any showing that a Class C1 channel would provide a first or second fulltime aural service or that a Class A channel is insufficient to provide the requisite signal coverage to the community. See *Durango and Telluride, Colorado and Kirtland, New Mexico*, 5 FCC Rcd 7467 (1990). Therefore, we find that the public interest would be served by allotting Channel 288A to Cottage Grove, and substituting Channel 289C1 for Channel 289C2 at Bend. As requested, we will also modify JJP's license for Station KQAK to specify operation on the higher powered channel.

5. Channel 288A can be allotted to Cottage Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) west to avoid a short-spacing to the Channel 289C1 allotment at Bend. Channel 289C1 can be allotted to Bend with a site restriction of 17.9 kilometers (11.1 miles) west to accommodate petitioner's desired transmitter site.⁶

6. 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

¹ The community of Bend has been added to the caption.

² The Commission also has before it the *Notice of Proposed Rule Making* in MM Docket No. 90-494 proposing the allotment of Channel 273A to Cottage Grove, issued in response to the petition for rule making submitted by Paul C. Bjornstad. See 5 FCC Rcd 6351 (1990).

³ Public Notice of the filing of the counterproposal was given on March 15, 1990, Report No. 1810.

⁴ After the record closed, petitioner filed a Motion to Strike O'Renick's reply comments to which the Foundation filed an Opposition. Petitioner contends that O'Renick's reply comments are untimely filed because they were filed after the reply comment period specified in the *Notice*. Petitioner is incorrect. Public Notice of the filing of the counterproposal was given on March 15, 1990, and responses thereto were due on or before April 2, 1990. Therefore, petitioner's Motion to Strike is denied.

In addition, JJP Broadcasting, Inc. ("JJP"), successor to the Foundation as licensee of Station KQAK(FM) (formerly KWBX), Bend, Oregon, filed supplemental comments accompanied by a motion for their acceptance. The Commission's Rules do not contemplate the acceptance of pleadings beyond the comment and reply comment cycle. However, JJP's supplemental comments will be accepted to the extent of permitting it to express continuing interest in the allotment of Channel 289C1 at Bend.

⁵ The licensee of Station KQAK informed the Commission on January 16, 1991, that the station has resumed on-air operations.

⁶ The coordinates for Channel 288A at Cottage Grove are North Latitude 43-47-40 and West Longitude 123-09-01. The coordinates for Channel 289C1 at Bend are 44-02-48 and 121-31-53.

ORDERED, That effective **August 22, 1991**, 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:

City	Channel No.
Bend, Oregon	231C, 248C1, 252A, 264C1, 289C1
Cottage Grove, Oregon	288A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of JJP Broadcasting, Inc., for Station KQAK, Bend, Oregon, IS MODIFIED to specify operation on Channel 289C1, in lieu of Channel 289C2, 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).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (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.

8. The window period for filing applications for Channel 288A at Cottage Grove, Oregon, will open on **August 23, 1991**, and close on **September 23, 1991**.

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

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau