

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

FEDERAL COMMUNICATIONS COMMISSION

MM Docket No. 95-151

In the Matter of

Amendment of Section 73.202(b), RM-8695
Table of Allotments,
FM Broadcast Stations.
(Snyder, Texas)

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

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 14, 1995; Released: January 26, 1996

By the Chief, Allocations Branch:

1. At the request of Mark C. Nolte ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 10426 (1995), proposing the allotment of Channel 246A to Snyder, Texas, as the community's second local FM service. Petitioner filed comments reiterating his intention to apply for Channel 246A, if allotted. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 246A to Snyder since it could provide the community with an additional FM service. Channel 246A can be allotted to Snyder in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.¹

3. 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 11, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<i>City</i>	<i>Channel No.</i>
Snyder, Texas	246A, 269A ²

4. The window period for filing applications will open on March 11, 1996, and close on April 11, 1996.

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

6. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

¹ The coordinates for Channel 246A at Snyder are North Latitude 32-43-04 and West Longitude 100-55-02.

² As stated in the *Notice*, Station KSNY(FM) is currently licensed as a Class A facility, however, the licensee of Station

KSNY(FM) has filed an application to upgrade its facilities to Channel 268C3 pursuant to the one-step upgrade application process.

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

MM Docket No. 95-136

In the Matter of

Amendment of Section 73.606(b) RM-8682
Table of Allotments,
TV Broadcast Stations.
(Sioux Falls, South Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 15, 1995; Released: January 26, 1996

By the Chief, Allocations Branch:

1. At the request of Red River Broadcast Corp. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 9295 (1995), proposing the allotment of UHF Television Channel 46 at Sioux Falls, South Dakota, as potentially the community's sixth local television broadcast service. If the channel is allotted with cut-off protection, petitioner also requests that its pending application for Channel 36+ be amended to specify operation on Channel 46. Petitioner filed untimely comments reaffirming its intention to apply for the channel, if allotted with cut-off protection.¹ Comments were filed by Midcontinent Television of South Dakota, Inc. ("Midcontinent"). Petitioner filed reply comments.

2. As indicated in the *Notice*, petitioner is one of two applicants for Channel 36+ at Sioux Falls, South Dakota, and the allotment of Channel 46 would accommodate both applicants' desire for a television channel in Sioux Falls and avoid the need for a comparative hearing. Because of developments related to our comparative licensing procedures, we are currently unable to designate these applications for a comparative hearing or otherwise resolve these mutually exclusive applications. See *Bechtel v. Federal Communications Commission*, 10 F.3d 875 (D.C. Cir. 1993). Therefore, the *Notice* also proposed to allow petitioner to amend its application to specify operation on Channel 46 and retain its cut-off protection. The *Notice* indicated that there was an additional UHF channel available for other expressions of interest.

3. In its comments, Midcontinent states that it has no objection to petitioner's request for the allotment of Channel 46 at Sioux Falls, South Dakota, and the amendment of petitioner's application to specify operation on Channel 46 in lieu of Channel 36+. However, Midcontinent filed its comments to "clarify" the fact that petitioner has no agreement with them to use the Rowena Tower Site, the refer-

ence coordinates (North Latitude 43-31-07 and West Longitude 96-32-05) specified in the rule making petition. The Rowena Tower Site is co-owned by Midcontinent and used by Stations KELO-TV and KSFY-TV. Midcontinent acknowledges that a petitioner need only show that a "theoretical site" exists that complies with the Commission's technical requirements, citing *Pinckneyville, Illinois*, 41 RR 2d 69, 71 (1977). However, Midcontinent contends that an applicant must have reasonable assurance that the site specified in its application is actually available. See FCC Form 301, Section VII, Question 2. Midcontinent advises that in the past, petitioner has approached them concerning the use of the Rowena Tower Site for a new television station, but its proposal was rejected. Midcontinent maintains that petitioner therefore cannot rely on the use of the proposed site in any construction permit, and that the submission of such an amendment proposing the Rowena Tower Site would constitute a material misrepresentation of fact.

4. In its reply comments, petitioner notes that Midcontinent does not oppose the allotment of Channel 46 at Sioux Falls, and only filed its comments "for the purpose of clarifying" that the reference coordinates specified in the petition are not the actual proposed site for the new station. Petitioner concedes that the specified site is the location of a tower owned by Midcontinent, and it has not been given permission to use the tower. However, Red River Broadcast Corp. agrees with Midcontinent that a petitioner for a new allotment need only demonstrate that a "theoretical site" exists that complies with Commission's technical requirements. Moreover, petitioner states that in support of a rule making petition, it is consistent with engineering practice to use an existing tower for the proposed reference coordinates. In keeping with this practice, petitioner asserts that Rowena Tower Site was chosen merely to demonstrate that Channel 46 can be allotted at Sioux Falls consistent with the Commission's technical requirements. Therefore, as requested by Midcontinent, petitioner affirms that it is not relying on the Rowena Tower Site as the actual site for the new facility.

5. We believe the public interest would be served by allotting Channel 46 at Sioux Falls, South Dakota, since it potentially would provide the community with its sixth local television broadcast service and avoid the need for a comparative hearing consistent with our precedent. See, e.g., *C opeland, Kansas*, 5 FCC Rcd 7682 (1990); *Roseburg, Oregon*, 6 FCC Rcd 4369 (1991); and *Albion, Nebraska*, 10 FCC Rcd 3183 (1995), *rev. denied*, 10 FCC Rcd 11927 (1995). An engineering analysis has determined that Channel 46, with zero offset, can be allotted to Sioux Falls in compliance with the Commission's minimum distance separation requirements at city reference coordinates.² This action is not affected by the television freeze imposed in certain metropolitan areas.³ Furthermore, in view of the fact that there are no other timely filed expressions of interest in this proceeding, we will allow petitioner to amend its application (BPCT-941227KI) to specify opera-

¹ Petitioner's comments were accompanied by a "Motion to Accept Late-Filed Comments." In view of the fact that this proceeding is uncontested, we have accepted the comments for the purpose of allowing petitioner to reaffirm its interest in applying for the channel.

² The coordinates for Channel 46 at Sioux Falls are North Latitude 43-32-30 and West Longitude 96-44-00.

³ See, *Order, Advanced Television Systems and Their Impact on Existing Television Broadcast Service*, 52 Fed. Reg. 28346, July 29, 1987.

tion on Channel 46 in lieu of Channel 36+ and retain its cut-off protection. *See, e.g., Copeland, Kansas, supra; Roseburg, Oregon, supra; and Albion, Nebraska, supra.*

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 ORDERED, That effective March 11, 1996, the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Sioux Falls, South Dakota	11, 13+, 17-, *23, 36+, 46

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

8. 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