

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-305
Table of Allotments,)	RM-10980
FM Broadcast Stations.)	RM-11328
(Oak Harbor and Sedro-Woolley, Washington))	RM-11329
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 31, 2006

Released: September 5, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*¹ issued in response to a petition for rule making (RM-10980) filed by Dana J. Puopolo (Petitioner), requesting the allotment of Channel 289A at Oak Harbor, Washington as a second local service.² Petitioner filed comments stating his continuing interest in pursuing Channel 289A at Oak Harbor, and his intention to apply for a construction permit if allotted. Bible Broadcasting Network, Inc. ("Bible") timely filed a counterproposal (RM-11328) proposing to allot Channel *289A³ at Oak Harbor but requesting that the channel be reserved for noncommercial educational ("NCE") FM use.⁴ Jodesha Broadcasting, Inc. ("Jodesha") also timely filed a counterproposal (RM-11329) proposing to allot Channel 289A at Sedro-Woolley, Washington.⁵ Dr. Sandra Woodruff filed comments opposing the proposed allotments.⁶

2. Conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*⁷ where no alternate channels are available. However, we have determined that there are alternate channels to satisfy the competing proposals for Channel 289A at Oak Harbor for commercial and NCE use. Accordingly, we can remove the mutual exclusivity between Channel 289A at Oak Harbor and Channel 289A at Sedro-

¹ See *Fruita, Colorado, et al.*, Notice of Proposed Rule Making, 19 FCC Rcd 15303 (MB 2004) ("*Notice*") (The instant *Report and Order* disposes of one docket in this multiple docket *Notice of Proposed Rule Making*).

² The *Notice* inadvertently stated that the proposed Channel 289A allotment would provide a first local aural transmission service to Oak Harbor when in fact AM daytime only Station KWDB already provides first local service to the community.

³ The FM Table of Allotments denotes NCE FM channels with an asterisk preceding the channel listing. See 47 C.F.R. § 73.202.

⁴ Bible's counterproposal was placed on Public Notice on August 3, 2006, Report No. 2769-CORRECTION.

⁵ Jodesha's counterproposal was placed on Public Notice on August 3, 2006, Report No. 2770-CORRECTION.

⁶ Petitioner filed Supporting Comments and Reply Comments. Bible filed "Comments on Notice of Proposed Rulemaking and Counterproposal," Reply Comments, "Statement Regarding Counterproposals," and "Reply Comments and Supplement to Statement Regarding Counterproposals." Jodesha filed Counterproposal and Reply Comments. Woodruff filed "Objection to Petition for Rulemaking" and "Reply to Comments."

⁷ Second Report and Order, 90 FCC 2d 88, 92 n.8 (1982).

Woolley, without undertaking such a comparative analysis. With regard to Petitioner's proposal to allot Channel 289A at Oak Harbor, our staff engineering analysis has determined that Channel 277A is available as an alternate channel at city reference coordinates 48-17-36 North Latitude ("NL") and 122-38-31 West Longitude ("WL").⁸ Canadian concurrence has been obtained. We find that the public interest would be served by allotting Channel 277A at Oak Harbor as a second local service.

3. With regard to Bible's counterproposal for Channel *289A at Oak Harbor, it satisfied the revised criteria established in the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*⁹ by which a rulemaking proponent may reserve an FM allotment for NCE use. Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 200 through 220) and the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m contour of the proposed station, and that such population is at least 2000 persons. However, to remove the conflict with Jodesha's counterproposal, we propose alternate Channel *233A at city reference coordinates 48-17-36 NL and 122-38-31 WL. Canadian concurrence has been obtained. We find that there are no reserved channels available for NCE use and that the reservation of Channel *233A at Oak Harbor for NCE use would provide a first NCE service to at least 10% of the total population of 19,795 persons.

4. These channel changes eliminate all technical conflicts with Jodesha's counterproposal to allot Channel 289A at Sedro-Woolley.¹⁰ Sedro-Woolley is an incorporated city with a 2000 U.S. Census population of 8,658 persons with a mayor and seven-member city council that provides municipal services. We find that the public interest would be served by allotting Channel 289A as a first local service to the community of Sedro-Woolley. Channel 289A can be allotted at city reference coordinates 48-30-14 NL and 122-14-10 WL. Although Canadian concurrence has been requested, notification has not been received. If a construction permit for Channel 289A at Sedro-Woolley, Washington is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition; "Operation with the facilities specified herein for Sedro-Woolley, Washington, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada."

5. Lastly, we reject Woodruff's assertion that Canadian Station CBU-FM would cause objectionable interference to Channel 289A at Sedro-Woolley and Channel 289A at Oak Harbor. As discussed *supra*, interference between U.S. and Canadian stations are specially-negotiated short-spaced allotment, and alternate channels have been found at Oak Harbor.

6. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

⁸ As stated in the *Notice*, Jodesha's minor change application (File No. BPH-20031021ADK) to upgrade Station KJET(FM) from Channel 289C2 to Channel 289C1 at Raymond, Washington would be treated as a counterproposal because it was filed after Petitioner's filing and conflicts with Petitioner's proposed allotment of Channel 289A at Oak Harbor. However, alternate Channel 277A at Oak Harbor removes the conflict. The application will be reviewed separately from this proceeding.

⁹ Report and Order, 15 FCC Rcd 7386 (2000). Previously, the Commission would only reserve a channel in the nonreserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station or a foreign broadcast station.

¹⁰ We note that contrary to Bible's assertion, Jodesha's proposal to allot Channel 289A at Sedro-Woolley as a first local service does not require a showing pursuant to *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"). The *Tuck* showing is only applicable to change of community proposals.

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective, October 20, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Oak Harbor, Washington	277A, *233A
Sedro-Woolley, Washington	289A

8. The window period for filing applications for Channel 277A and Channel *233A at Oak Harbor, Washington, and Channel 289A at Sedro-Woolley, Washington will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

9. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Helen McLean, Media Bureau, (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
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