

## SUPPLEMENTAL EXHIBIT

On September 25, 2007, the Commission granted an application to change the facilities of KJDX from Channel 227C at Susanville, California to Channel 227A at Pollock Pines, California (BPH-20070226ABI). That application was filed pursuant to the Commission's new streamlined community of license change procedures.<sup>1</sup> The instant application proposes to modify the KJDX construction permit to operate KJDX on Channel 226B1 rather than Channel 227A at Pollock Pines. Thus, the application is not proposing a second community of license change, but is proposing a one-step upgrade.

As demonstrated in the "KJDX Comprehensive Engineering Exhibit" appended to the instant application, both the proposed assignment and antenna coordinates are mutually exclusive with the construction permit for KJDX at Pollock Pines (BPH-20070226ABI). The proposal, however, are not mutually exclusive with the previous KJDX license at Susanville, California (BLH-19860716KA). Nevertheless, as demonstrated herein, this application is in compliance with the Commission's rules and policies.

In proceedings to amend the FM Table of Allotments, mutual exclusivity was based on a station's present assignment and not its previous license.<sup>2</sup> This is because stations, like KJDX, that are operating with a permit that modified the FM Table of Allotments (*i.e.*, either a community of license change or a one-step channel change) are operating its previous licensed facilities pursuant to an "implied STA."<sup>3</sup> The station's previous license (here, KJDX's facilities on Channel 227C at Susanville) is no longer protected and the station cannot return to its former licensed facilities at Susanville.<sup>4</sup> The

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<sup>1</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) ("*Streamlining Report & Order*").

<sup>2</sup> See, *e.g.*, 47 C.F.R. § 1.420(i) (a station may change community of license "where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."); see also, *Corona de Tucson, Arizona, et al.*, 23 FCC Rcd 4792, ¶ 10 (2008) ("*Corona de Tucson*").

<sup>3</sup> See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 14 FCC Rcd 17525, n.55 (1999); *1998 Biennial Regulatory Review -Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849, 14855 n.22 (1998) ("*Radio Technical Rules*").

<sup>4</sup> See *Radio Technical Rules*, 13 FCC Rcd at 14855 n.22 ("We take this opportunity to clarify the consequences of the grant of a one-step FM commercial station application to change channel or station class. Such a grant amends the table of allotments and modifies that station license to operate on the new

status of KJDX is also reflected in its new construction permit, which states that KJDX's license "is modified to specify operation on Channel 227A at Pollock Pines, CA in lieu of Channel 227C at Susanville, CA." See BPH-20070226ABI. In fact, once the Commission's grant of the permit for KJDX became final, KJDX's old license is no longer protected from subsequently filed applications by other parties.<sup>5</sup> This rationale was the basis for the recent decision on reconsideration in *Corona de Tucson*, supra. Thus, it would be baseless for the Commission to create a new rule for the streamlined one-step procedures without prior notice when the policy was well established for many years in the context of the rule making step and the implementing application step.

KJDX recognizes that the Commission, in the recent *Streamlining Report & Order*, made a policy decision to limit stations' ability to change community of license a second time. More specifically, the Commission stated that "any application proposing a community of license change filed by a permittee that has not built its current permitted facilities and that is not mutually exclusive with either the applicant's built and operating facilities or its original allotment shall be returned as unacceptable for filing."<sup>6</sup> The stated policy reason for this limitation is to prevent stations from "hop-scotching" across the country.<sup>7</sup> However, this policy does not apply to the instant application for two reasons. First, the instant application does not propose to change KJDX's community of license. Second, the Commission's concern about "hop-scotching" is not applicable because KJDX's community of license is remaining at Pollock Pines. Thus, this station's

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channel and/or class. See *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, Report and Order, 8 FCC Rcd 4735 (1993). During the construction permit period, the licensee may continue to operate the previously authorized facilities on an interim or "implied Special Temporary Authority" basis. However, in contrast to our treatment of routine minor modification applications under Section 73.208, the formerly authorized facilities are no longer protected from subsequently filed applications. If the permittee fails to timely construct and lets its permit lapse, the permittee is not relieved of the obligation to change to the channel and class specified in the amended Table of Allotments.").

<sup>5</sup> *Id.*

<sup>6</sup> *Streamlining Report & Order*, 21 FCC Rcd at ¶ 11 (emphasis added).

<sup>7</sup> *Id.*

ability to move is limited by the continued need to provide city-grade coverage to Pollock Pines.<sup>8</sup>

In conclusion, the instant application complies with the Commission's rules and policies because (i) the proposed operation on Channel 226B1 at Pollock Pines is mutually exclusive with KJDX's present assignment on Channel 227A at Pollock Pines, and (ii) the instant application does not propose a change of community of license.

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<sup>8</sup> The applicant has searched relevant case law, policy decisions, and rule provisions for any requirement that the proposed facility must remain mutually exclusive with the most recent licensed facility (when the proposal is in conflict with an existing authorization). But no such case, policy, or rule was found.