

**WAIVER OF SECTION 73.3573(G)(4)**

San Joaquin Broadcasting Co. respectfully requests a waiver of Section 73.3573(g)(4) of the Commission's rules which provides that non-reserved band applicants proposing a change in the community of license of an FM station, demonstrate the existence of a suitable assignment or allotment site that fully complies with Section 73.207 and 73.315 without resort to Section 73.213 or Section 73.215. The instant application seeks to change the community of license of KLVS(FM) from Stockton, California to Livermore, California. The technical facilities of the proposed station will remain the same as the currently authorized facility.

According to the aforementioned rule, San Joaquin Broadcasting Co. must provide allocation coordinates that are fully spaced and whose 70 dBu contour covers 100% of the proposed community. San Joaquin Broadcasting Co. submits that there are currently no fully spaced allocation coordinates for the community of license at Livermore, California and furthermore, there are no fully spaced allocation coordinates for the current community – Stockton, California. The current and proposed KLVS(FM) transmitter site does not currently comply with the Section 73.207 requirements due to the station's grandfathered status per Section 73.213 of the Commission's rules. KLVS(FM) is short-spaced to a first adjacent vacant allotment assigned to Sutter Creek on Channel 298A as well as second adjacent channels KSAN and KFRC-FM. Accordingly, San Joaquin Broadcasting Co. has provided the KLVS(FM) transmitter site coordinates in Section III-B, Item 4 of the instant application that minimize the short-spacing to the above-mentioned stations, and is requesting a waiver of 73.3573(g) for the reasons set forth below.

With regards to KLVS(FM)'s short spacing to second adjacent channels KSAN and KFRC-FM, KLVS(FM) has no distance separation or interference protection requirements pursuant to Section 73.213(a)(4) of the Commission's rules. However, Section 73.3573(g)(4) does not allow for use of 73.213 in determining the allocation coordinates when proposing a community of license change. San Joaquin Broadcasting Co. requests a waiver of the short spacing rules on the basis of Commission precedent set forth below. As in *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Newnan and Peachtree City, Georgia)*, 7 FCC Rcd 6307 (1992) ("*Peachtree City*"), San Joaquin Broadcasting Co. is not requesting the creation of any new short spacing in its proposal, as there is no site change being proposed in this application and the station currently places a 70 dBu signal over Livermore at the existing transmitter site (the same site specified in the application). In *Peachtree City*, the Commission waived its short spacing rules where the reallotment of a grandfathered station did not create new short spacings, increase existing short spacing or increase the potential for interference between currently short spaced stations.<sup>1</sup>

KLVS(FM) is also short-spaced to a first adjacent vacant allotment assigned to Sutter Creek on Channel 298A. The short spacing to Sutter Creek was created by the Commission when it amended the Table of FM Allotments to include Sutter Creek, and not due to any

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<sup>1</sup> *Peachtree City*, 7 FCC Rcd at 6308 (affirmed in *Berlin and North Conway*, New Hampshire, 14 FCC Rcd 15307 (1999) and *Oceanside and Encinitas*, California, 14 FCC Rcd 15302 (1999)).

modifications to KLV(S)(FM). In *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Killeen and Cedar Park, Texas)*, 15 FCC Rcd 1945 (2000) (“*Killeen*”) the Commission extended its *Peachtree* policy to post-1964 FM stations that requested contour protection. Even though the Sutter Creek allotment does not involve Section 73.215 of the Commission’s rules, the spirit of the decision nevertheless holds true in this circumstance where the short-spacing was created by an FCC approved modification to a post-1964 station. And in *Killeen*, the Commission concluded that waiver of the short-spacing rules was warranted because, “to do otherwise would result in preventing a station from changing its community of license where it did not create the short-spacing, even though the change results in a preferential arrangement of allotments.”<sup>2</sup> San Joaquin Broadcasting Co. submits that KLV(S)(FM) is similarly situated in that it proposes in this application merely a change in city of license with no technical change, and thus there is no increased short-spacing or interference that will result from this proposal between KLV(S)(FM) and any other station. San Joaquin Broadcasting Co. recognizes that the Commission began accepting applications for the Sutter Creek allotment but believes that the waiver is nevertheless warranted because there were no technical changes to KLV(S)(FM), therefore any new applicants were required to protect KLV(S)(FM) or request contour protection.

Grant of this waiver will conform with the Commission’s rationale in *Peachtree City* and *Killeen*, that “grandfathered” FM stations were in compliance with the Rules when authorized and should be afforded the same opportunity to change their community of license as other stations authorized in conformity with the Rules. The new rules permitting Form 301 applications to be used to change the city of license of a station were meant to simplify processing of such changes by allowing these changes by application rather than rulemaking<sup>3</sup>, and as the change proposed herein would have been permitted under the amendment process in place when Table of Allotment changes were needed to change a city of license, the same change should now be permitted by application under the new rules. Moreover, this change will result in a preferential arrangement of allotments as it will bring in a second local service to Livermore, while Stockton will continue to be served by four FM and three AM stations. Therefore, this change is in the public interest and San Joaquin Broadcasting Co. respectfully requests that the Commission grant this waiver and the instant application.

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<sup>2</sup> See *Killeen*, 15 FCC Rcd 1945 at ¶11.

<sup>3</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments*, 21 FCC Rcd 14212 (2006).