

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 11-207
FM Broadcast Stations.)	RM-11517
(Ehrenberg, First Mesa, Kachina Village, Munds)	RM-11518
Park, Wickenburg, and Williams, Arizona))	RM-11669
)	
Application of)	
Univision Radio License Corporation)	File No. BPH-20080915AFP
KHOV-FM, Wickenburg, Arizona)	Facility ID No. 29021

MEMORANDUM OPINION AND ORDER

Adopted: December 5, 2013

Released: December 6, 2013

By the Chief, Audio Division, Media Bureau:

1. We have before us a Petition for Reconsideration (the “Reconsideration Petition”) filed on March 18, 2013, by Univision Radio License Corporation (“Univision”), licensee of Station KHOV-FM, Wickenburg, Arizona. The Reconsideration Petition seeks review of the *Report and Order*¹ in this proceeding that dismissed Univision’s Petition for Rule Making and hybrid application (the “Wickenburg Petition and Application”)² and granted a Counterproposal filed by Grenax Broadcasting II, LLC (“Grenax”), licensee of Station KBTK(FM), Kachina Village, Arizona (the “Counterproposal”).³ We also have before us a Joint Request for Approval of Settlement Agreement (“Joint Request”) filed on July 26, 2013, by Grenax and Univision (collectively, the “Settling Parties”).⁴ The Joint Request seeks approval for the withdrawal of Grenax’s Counterproposal and the reinstatement and grant of Univision’s Wickenburg Petition and Application. For the reasons set forth below, we approve the Joint Request, grant the Wickenburg Petition and Application, and dismiss Grenax’s Counterproposal and associated application.

2. **Background.** The Settling Parties filed mutually exclusive proposals in this proceeding. Initially, Univision filed the mutually contingent Wickenburg Petition and Application. The Wickenburg Application proposed an upgrade for its Station KHOV-FM, Wickenburg, from FM Channel 287C2 to Channel 286C0 at a new transmitter site. In order to facilitate this upgrade, the Wickenburg Petition requested an involuntary channel change for Grenax’s Station KBTK(FM), Kachina Village, Arizona, from

¹ See *Ehrenberg, First Mesa, et al., Arizona*, Report and Order, 28 FCC Rcd 1262 (MB 2013) (“R&O”).

² See RM-11518 and File No. BPH-20080915AFP, respectively.

³ See RM-11669.

⁴ On July 26, 2013, Univision also filed a Supplement to Petition for Reconsideration.

Channel 286C2 to Channel 246C2.⁵ In response, Grenax filed a timely Counterproposal⁶ to allot Channel 246C2 to Munds Park, Arizona.⁷ The Counterproposal was mutually exclusive with the Wickenburg Petition and Application because the proposed Channel 246C2 allotments at Munds Park and Kachina Village are short-spaced under the minimum distance separation requirements.⁸

3. In the *R&O*, we comparatively evaluated the proposals under the Commission's FM Allotment Priorities.⁹ We found that, under Priority (4), other public interest matters, a second local service at Munds Park is preferable to an increase in existing service at Wickenburg, including the provision of an additional service to some underserved listeners.¹⁰ Therefore, we granted the Counterproposal, allotted Channel 246C2 at Munds Park, substituted Channel 281C for vacant Channel 247C at First Mesa, and dismissed the Wickenburg Petition and Application. Thereafter, Univision timely filed the Reconsideration Petition, arguing that the Wickenburg Petition and Application should be favored over Grenax's Counterproposal on various grounds.

4. On July 26, 2013, the Settling Parties filed the Joint Request, seeking approval of a Settlement Agreement (the "Agreement") under Section 1.420(j) of the Rules.¹¹ Under this Agreement, Grenax agrees to withdraw its Counterproposal and long-form application for the Munds Park allotment and to implement the Order to Show Cause to change Station KBTK(FM)'s frequency from Channel 286C2 to Channel 246C2 to accommodate the Wickenburg Application. In return, Univision agrees to reimburse Grenax \$59,628 for its legitimate and prudent expenses for prosecution of its Counterproposal and for the negotiation and settlement process,¹² subject to the Commission reinstating and granting the Wickenburg

⁵ The Wickenburg Petition also requested channel substitutions for two vacant allotments. Specifically, it proposed to substitute Channel 228C2 for vacant Channel 282C2 at Ehrenberg, Arizona, and to substitute Channel 281C for vacant Channel 247C at First Mesa, Arizona.

⁶ See *Ehrenberg, First Mesa, et al., Arizona*, Notice of Proposed Rule Making and Order to Show Cause, 26 FCC Rcd 16965 (MB 2011) ("Notice").

⁷ As required by Commission policy, Grenax filed a construction permit application (File No. BNPH-20120221ACZ) for Channel 246C2 at Munds Park and paid the filing fees. In order to accommodate the Munds Park allotment, Grenax also requested the substitution of Channel 281C for vacant Channel 247C at First Mesa.

⁸ See 47 C.F.R. § 73.207.

⁹ The FM Allotment Priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

¹⁰ See *R&O*, 28 FCC Rcd at 1262. The Counterproposal would provide a second reception service to 246 persons, a third reception service to 2,280 persons and a fourth reception service to 52 persons, as well as an overall increase in service to 1.29 million persons.

¹¹ See 47 C.F.R. § 1.420(j).

¹² The Agreement itemizes these expenses as follows:

1. Legal expenses for prosecution of Counterproposal	\$39,300
2. Engineering expenses for Counterproposal	\$5,900
3. Legal expenses for settlement	\$14,428
Total:	\$59,628

See Joint Request for Approval of Settlement Agreement, Exhibit A, Settlement Agreement, Schedule A.
(continued....)

Petition and Application.¹³ The Agreement also provides that Univision would reimburse Grenax for its reasonable expenses in changing Station KBTK(FM)'s channel, which are estimated at \$101,112.¹⁴ The Settling Parties contend that this Agreement complies with Section 1.420(j) because, as documented by affidavits, neither Grenax nor its principals has or will receive any money or other consideration in excess of Grenax's legitimate and prudent prosecution, settlement, and channel change expenses. They also believe that this settlement will conserve the parties' and the FCC's resources and expedite the initiation of improved service to several Arizona communities. Accordingly, the Settling Parties request approval of the Agreement.

5. Discussion. *Section 1.420(j).* We find that the Joint Request and the Agreement comply with Section 1.420(j) because Grenax is withdrawing its Counterproposal in return for reimbursement of its itemized and documented expenses incurred in prosecuting its Counterproposal and negotiating and seeking approval of the settlement.¹⁵ Each party filed a declaration in accordance with Section 1.420(j), containing an itemization of reimbursable expenses that have been or will be incurred.¹⁶ We have reviewed these submissions and find them to be legitimate and prudent expenses under the *Circleville* guidelines.¹⁷ Accordingly, we approve the Joint Request and the Agreement pursuant to Section 1.420(j), vacate the *R&O*, dismiss Grenax's Counterproposal, and reinstate the Wickenburg Petition and Application.

6. Republication. Although the Settling Parties filed the Joint Request under Section 1.420(j), we note that Section 73.3525(b) of the Rules is also relevant because Grenax is dismissing a conflicting, long-

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¹³ See Univision's Supplement to Petition for Reconsideration at 3.

¹⁴ The Agreement itemizes these estimated expenses as follows:

1. New Antenna	\$31,112
2. Installation/Tower Crew	\$30,000
3. Technical Services	\$15,000
4. Promotional Expenses	\$25,000
Total	\$101,112

The agreement also provides that these estimates may increase due to vendor price changes over the passage of time. See Joint Request for Approval of Settlement Agreement, Exhibit A, Settlement Agreement at 4 and Schedule A.

¹⁵ See, e.g., *Crowell, et al., Texas*, Report and Order, 19 FCC Rcd 5347 (MB 2004) (approving withdrawal of an expression of interest in an FM allotment proceeding in return for reimbursement of the party's itemized and documented out of pocket expenses in prosecuting its proposal).

¹⁶ See Joint Request for Approval of Settlement Agreement, Exhibit B, Declaration of Jose Valle of Univision and Declaration of Greg Dinetz of Grenax.

¹⁷ See *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159, 163 (1967) (requiring that, whenever an existing station is ordered to change frequency to accommodate another station, the benefiting station must reimburse the affected station for its reasonable and prudent expenses and establishing guidelines for determining reimbursement) ("*Circleville*"). See also, *Howard M. Weiss, Esq., and Christopher D. Imlay, Esq.*, Letter, 28 FCC Rcd 3234 (MB 2013) (approving reimbursement of legitimate and prudent expenses totaling \$75,554 in connection with an involuntary channel change).

form application for the Munds Park allotment,¹⁸ as well as the Counterproposal. Under Section 73.3525(b), whenever the terms of a settlement agreement between mutually exclusive broadcast applications include the withdrawal of an application, the Commission requires republication of local notice in the community of the withdrawing application if it determines that the application's withdrawal would unduly impede achievement of a fair, efficient, and equitable distribution of radio service under Section 307(b) of the Communications Act of 1934, as amended.¹⁹ In this case, we find that the dismissal of the application would not unduly impede the principles embodied in Section 307(b) because Munds Park, a small community with a population of 631 persons, already has one local service.²⁰ The community also receives 15 aural services.²¹ Additionally, the Section 307(b) preference in this case was made under Priority (4), other public interest matters. Accordingly, we conclude that no local republication is required and approve the dismissal of Grenax's application for the Munds Park allotment.

7. *Wickenburg Petition and Application.* Having dismissed the Grenax Counterproposal and associated long-form application, we will grant the Wickenburg Application to upgrade the class of channel of Station KHOV-FM from Channel 287C2 to Channel 286C0. The upgrade will serve the public interest because it will provide a net gain of service to 1,294,275 persons with no loss of service and will include some new service to underserved areas.²² Further, to accommodate the Wickenburg Application, we will also grant the allotments proposed in the Wickenburg Petition. First, we will modify the license of Station KBTK(FM), Kachina Village, to specify operation on Channel 246C2 in lieu of Channel 286C2. Second, we will substitute Channel 228C2 for vacant Channel 286C2 at Ehrenberg, Arizona. Third, we will retain Channel 281C at First Mesa, Arizona, as this channel was already substituted for vacant Channel 247C at First Mesa in the *R&O*.

8. *Technical Matters.* Channel 286C0 can be substituted for Channel 287C2 at Wickenburg at the site specified in the Wickenburg Application, which has reference coordinates of 34-11-23 NL and 112-45-18 WL.²³ Because this site is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by Mexico has been obtained. Likewise, Channel 246C2 can be substituted for Channel 286C2 at the licensed site for Station KBTK(FM), Kachina Village, Arizona, at reference coordinates of 34-58-06 NL and 111-30-29 WL. Channel 228C2 can be substituted for Channel 286C2 at Ehrenberg, Arizona, at reference coordinates of 33-36-54 NL and 114-24-14 WL.²⁴ Finally, we will retain Channel 281C at First Mesa, Arizona, at reference coordinates of 35-41-09 NL and 110-21-43 WL.

¹⁸ See File No. BNPH-20120221ACZ.

¹⁹ See 47 C.F.R. § 73.3525(b). See also 47 U.S.C. § 307(b).

²⁰ Station KFSZ(FM) is licensed to Munds Park.

²¹ See, e.g., *Elijah Broadcasting Corporation*, Letter, 16 FCC Rcd 21561 (MB 2001) (not requiring republication where community of withdrawing application has 3 local stations and receives 14 radio services).

²² See *supra* note 10. In view of our action granting the Wickenburg Petition and Application, we will dismiss Univision's Reconsideration Petition and Supplement as moot.

²³ The allotment reference coordinates for Channel 286C0 at Wickenburg are 34-04-17 NL and 112-47-55 WL.

²⁴ We are allotting Channel 228C2 at Ehrenberg at reference coordinates that are different from those requested in the Wickenburg Petition in order to accommodate a proposal in a pending allotment proceeding. See *Ehrenberg, Arizona*, Notice of Proposed Rule Making, 28 FCC Rcd 5007 (MB 20013). In that proceeding, the rule making petitioner proposed the substitution of Channel 228C2 at Ehrenberg at these reference coordinates in order to accommodate a hybrid application for the reallocation of Station KSRX-FM from Twentynine Palms, California, to North Shore, California. See File No. BPH-20120316ABT.

9. **Conclusion/Ordering Clauses.** In view of the above, we conclude that the public interest is served by approval of the Joint Request, grant of the Wickenburg Petition and Application, and the dismissal of Grenax's Counterproposal and associated application. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) 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, January 21 2014, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, for the communities listed below, as follows:

<u>Communities</u>	<u>Channel Number</u>
Ehrenberg, Arizona	228C2
First Mesa, Arizona	281C
Munds Park, Arizona	---

10. IT IS FURTHER ORDERED, that pursuant to Section 316 of the Communications Act of 1934, as amended, the license for Station KBTK(FM), Kachina Village, Arizona, Facility ID No. 14938, IS MODIFIED to specify operation on Channel 246C2 in lieu of Channel 286C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the license shall submit to the Commission a minor change application for 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 assessment pursuant to Section 1.1307 of the Commission's Rules.

11. IT IS FURTHER ORDERED, that the Joint Request for Approval of Settlement Agreement filed by Grenax Broadcasting II, LLC and Univision Radio License Corporation IS GRANTED; the *Report and Order* in MB Docket No. 11-207 IS VACATED; the Counterproposal (RM-11669) filed by Grenax Broadcasting II, LLC, and the associated long-form application (File No. BNPH-20120221ACZ) ARE DISMISSED; and the Petition for Rule Making (RM-11518) and the application (File No. BPH-20080915AFP) filed by Univision Radio License Corporation ARE GRANTED.

12. IT IS FURTHER ORDERED, that the Petition for Reconsideration and Supplement to Petition for Reconsideration filed by Univision Radio License Corporation ARE DISMISSED as moot.

13. The Audio Division SHALL SEND a copy of this *Memorandum Opinion and Order* to Mace Rosenstein, Esq. and Daniel H. Kahn, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004 (Counsel to Univision); M. Scott Johnson, Esq., and Howard M. Weiss, Esq., Fletcher, Heald and Hildreth, PLC, 1300 N. 17th Street – Eleventh Floor, Arlington, Virginia 22209 (Counsel to Grenax); Greg Dinetz, Grenax Broadcasting II, LLC, 10337 Carriage Club Drive, Lone Tree, CO 80124; and Christopher Wood, Esq., Univision Communications Inc., 5999 Center Drive, Los Angeles, CA 90045.

14. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2120.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
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