

FEDERAL COMMUNICATIONS COMMISSION

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August 2, 2007

Appaloosa Broadcasting Company, Inc.
288 South River Road
Bedford, NH 03110

In re: KIMX (FM), Nunn, CO
Appaloosa Broadcasting Company, Inc.
Facility ID No. 82007
Application BPH-20070131ADT
as amended August 1, 2007

Dear ABC:

This letter refers to your application to change the community of license for KIMX from Laramie, WY to Nunn, CO, and to change the channel from 244C2 to 245A. To accommodate these changes, your application proposes the involuntary substitution of Channel 246C1 for Channel 245C1 at Terrytown, NE, and the modification of the license for KCML, Terrytown, NE from Channel 245C1 to Channel 246C1.

By letter dated July 9, 2007 we advised Appaloosa that the proposed substitution for KCML would conflict with a vacant allotment on Channel 247A at Wheatland, WY. Our review concluded that the adoption of the allotment was valid, and that the vacant allotment must be protected. The letter afforded Appaloosa one opportunity to amend the application to eliminate the deficiency.

In response, Appaloosa filed an amendment on August 1, 2007 proposing that the Commission move the Channel 247A Wheatland, WY allotment to Channel 287A. However, this substitution cannot be made in the context of a minor change application. The *Report and Order* in MB Docket 05-210, FCC 06-163, 21 FCC Rcd 14212 (2006) requires that channel substitutions to a vacant allotment be made in the forum of a notice and comment rulemaking (see paragraphs 15 and 16 of the *R&O*). Where the proposed channel change is related to a minor change application, a "hybrid" proposal must be filed, consisting of a petition for rulemaking submitted the same date as the minor change application, with both filings explicitly cross-referencing the other. We do have before us any concurrently filed rulemaking proposal for a channel substitution at Wheatland, nor does the present amended application refer to any such filing. We conclude that no channel substitution can be considered for Wheatland at this time, and that omission consequently blocks any channel change for KCML. As a result, application BPH-20070131ADT remains unacceptable for filing. Consequently, application BPH-20070131ADT IS DISMISSED.

Appaloosa may file a new minor change application, on the same date as a petition for rulemaking proposing to change the Channel 247A Wheatland allotment, and we will consider both proposals concurrently. Both filings must cross-reference the other, so that we may associate these items properly.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Bickel". The signature is fluid and cursive, with the first name "Dale" and last name "Bickel" being clearly legible, and "E." in the middle.

Dale E. Bickel
Senior Electronics Engineer
Audio Division
Media Bureau

cc: Thomas Hine, LLP
: Mr. Victor A. Michael, Jr.