



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

June 20, 2008

**DA 08-1443**

*In Reply Refer To:*

1800B3-SS

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In re: Deer Creek Broadcasting, LLC  
KHHZ(FM), Oroville, California  
Facility ID No. 50709  
File No. BPH-20070126ADB

Maverick Media of Santa Rosa License, LLC  
KXFX(FM), Santa Rosa, California  
Facility ID No. 22890  
File No. BPH-20070126ACZ

Results Radio of Chico Licensee, LLC  
KMJE(FM), Gridley, California  
Facility ID No. 52516  
File No. BPH-20070126ACY

**Minor Change Applications**

## Informal Objections

Dear Counsel:

This letter refers to the above-captioned applications to modify the respective licenses of Station KMJE(FM), Channel 268A, Gridley, California, (File No. BPH-20070126ACY), Station KXFX(FM), Channel 269A, Santa Rosa, California, (File No. BPH-20070126ACZ), and Station KHHZ(FM) Channel 249B1, Oroville, California (File No. BPH-20070126ADB) (collectively, the “Applications”). Specifically, Results Radio of Chico Licensee, LLC (“RRC”), licensee of Station KMJE(FM), proposes to re-allot Channel 268A from Gridley to Woodland, California, and modify the KMJE(FM) license to specify Woodland as the community of license. To replace the loss of the sole local service at Gridley, Deer Creek Broadcasting, LLC, licensee of Station KHHZ(FM), Oroville, proposes to re-allot Channel 249B1 from Oroville to Gridley and modify the KHHZ(FM) license to specify Gridley as the community of license. In order to accommodate Channel 268A at Woodland, Maverick Media of Santa Rosa License, LLC, licensee of Station KXFX(FM), Santa Rosa, proposes to change its reference coordinates.

Davis Community Television (“Davis Community”), licensee of Low Power FM (“LPFM”) Station KDRT-LP, Davis, California, filed an Informal Objection (“Objection”) on May 29, 2007, against the proposed changes. On June 13, 2007, the three applicants (collectively “Joint Applicants”) filed a Joint Opposition to the Objection (“Joint Opposition”), to which Davis Community replied (“Reply”) on June 26, 2007.<sup>1</sup> For the reasons discussed below, we deny the Objection and grant the Applications.

**Background.** These contingent applications were filed pursuant to Sections 73.3517 and 73.3573(g) of the Commission’s Rules (the “Rules”)<sup>2</sup> which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any re-allotment proposal must result in a preferential arrangement of allotments.<sup>3</sup> We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>4</sup> Grant of these applications would provide a second local service to Woodland under Priority 4 while Gridley would continue to receive local service from Station KHHZ(FM).

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<sup>1</sup> We note that on December 21, 2007, the Joint Applicants filed a Status Report and Supplement to which Davis Community filed a Response on January 17, 2008. In addition, in April and May of 2007, we received nine letters and one petition (collectively, the “Listener Objections”) from listeners of KDRT-LP supporting the continued operation of Davis Community and generally objecting to grant of the captioned KMJE(FM) application on the ground that it would force KDRT-LP off the air. These comments were not served on the applicants or their counsel. We believe it appropriate to treat these comments as informal objections of individual listeners pursuant to Section 1.1204(a)(8) of the Rules. The authors of these comments do not become parties to this proceeding by virtue of their comments. See Note 4 to Paragraph (d) of Section 1.1202 of the Rules, 47 C.F.R. § 1.1202.

<sup>2</sup> 47 C.F.R. §§ 73.3517, 73.3573(g).

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License* (“Community of License”), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

<sup>4</sup> *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

In its Objection, Davis Community claims that its Station KDRT-LP would receive destructive interference and would be forced to either change channels or terminate operations, which is contrary to the public interest.<sup>5</sup> With regard to the proposed re-allotment from Gridley to Woodland, Davis Community and several individual listeners<sup>6</sup> argue that it is a “clear public detriment” to remove service from the larger community of Oroville (with a population of 13,004 persons) to the smaller community of Gridley (with a population of 5,382 persons) merely to provide a second local service to “heavily served” Woodland.<sup>7</sup> Davis Community also argues that: (1) the Commission’s practice since 2006 of allowing license relocations by filing minor change applications violates the Administrative Procedure Act (the “APA”); (2) the Commission’s “other public interest factors” FM allotment priority, Priority 4, should be set aside as not in the public interest; and (3) KDRT-LP’s “displacement application” should be considered as a “fourth, contingent application” in this proceeding.<sup>8</sup> The Listener Objections voice strong support for the preservation of KDRT-LP which offers a wide range of locally produced and locally focused programming. Several listeners note that the City of Davis recognized KDRT-LP in 2006 with an award for excellence in community involvement.

**Discussion.** Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>9</sup> We will consider the Objection and the Listener Objections based on this standard of review.

*KDRT-LP Displacement.* With respect to Davis Community’s and the Listener Objections’ arguments concerning the potential displacement of KDRT-LP, we recognize the strong support that KDRT-LP enjoys in the Davis community. Nonetheless, the staff’s treatment of the captioned applications is legally independent of the outcome of the LPFM “displacement application” process.<sup>10</sup> However, in order to fully resolve issues raised in this proceeding, the staff has expeditiously reviewed Davis Community’s “displacement application” under the processing policies set forth by the Commission in its 2007 revision of the Low Power FM Rules.<sup>11</sup> We will be issuing simultaneously with the release of this order an STA to Davis Community to permit continued KDRT-LP operations. Finally, we wish to applaud RRC for its cooperative efforts, which include providing Davis Community both financial and technical assistance, to identify and realize a technical solution that would avoid impacting

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<sup>5</sup> Davis Community has also filed a minor change, “displacement application” (File No. BPL-20080509ADB) requesting to move to channel 239L100 because it states that its current operation on channel 268L100 would be displaced by grant of the captioned KMJE application.

<sup>6</sup> See, e.g., *Letter from Diane Crumley, Ph.D., et al.* (rec’d May 30, 2007).

<sup>7</sup> All populations are from the 2000 U.S. Census.

<sup>8</sup> See Objection at 1, 4, 9, and 18.

<sup>9</sup> 47 U.S.C. § 309(e). See also *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>10</sup> See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2231 (2000) (“[W]e do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations.”).

<sup>11</sup> See in *Creation of a Low Power Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21928 ¶ 63 (2007) (“*Third Report and Order*”).

current radio listening patterns.<sup>12</sup>

Concerning Davis Community's contention that the Commission should change its procedures regarding changes to the FM Table of Allotments and applications proposing changes in community of license, we agree with the Joint Applicants<sup>13</sup> that Davis Community had ample time to address its concerns on these matters during the appropriate rulemaking proceeding.<sup>14</sup> An adjudicatory proceeding involving a specific application is not the proper forum for requesting changes in Commission procedures and processing guidelines, or for seeking changes in well-established FM allotment priorities.<sup>15</sup> Moreover, we expressly reject Davis Community's contention that the Commission's current community change procedures violate the APA. Those procedures were adopted pursuant to APA-mandated notice-and-comment rulemaking procedures.

*The Reallocation Proposals.* Notwithstanding the arguments raised in the Objection and the Listener Objections, we find that the re-allotment of Channel 268A from Gridley to Woodland would, in fact, result in a preferential arrangement of allotments as required by *Community of License*. This would result in a competitive local service to the larger community of Woodland (with a population of 49,151 persons) and a net gain in service to 197,726 persons. As a result of the re-allotment of Channel 249B1 from Oroville to Gridley, Gridley would continue to receive local service from Station KHHZ(FM). As noted by Davis Community, this removes the second local service from Oroville. This is not fatal to the grant of the Applications. With respect to Oroville and Woodland, it is a preferential arrangement of allotments to have a competitive local service in the larger community of Woodland. In addition to the fact that Station KHHZ(FM) is not changing its actual facilities, we also note that all three communities would continue to receive in excess of five aural services.<sup>16</sup> Equally important, each of the communities involved in the re-allotment proposals would continue to have a local service.

**Conclusion/Actions.** We have examined each of the Applications and find that they comply with all pertinent statutory and regulatory requirements, including all of the Commission's spacing requirements. We also find that grant of the Applications would further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the Informal Objection filed by Davis Community Television and the Listener Objections against the contingent applications of Dear Creek Broadcasting, LLC, Results Radio of Chico Licensee, LLC, and Maverick Media of Santa Rosa License, LLC, ARE DENIED.

IT IS FURTHER ORDERED, that the applications of Dear Creek Broadcasting, LLC,

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<sup>12</sup> *Id.*

<sup>13</sup> Joint Opposition at 4.

<sup>14</sup> See, e.g., *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rulemaking, 20 FCC Rcd 11169(2005).

<sup>15</sup> See, e.g., *Tri-State Broadcasting Company, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3466, 3468 (1997) (Commission states that license renewal proceeding, unlike a rulemaking proceeding, is not the proper forum for requesting changes in Commission procedures).

<sup>16</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1993), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

(File No. BPH-20070126ADB); Results Radio of Chico Licensee, LLC, (File No. BPH-2007012ACY); and Maverick Media of Santa Rosa License, LLC, (File No. BPH-20070126ACZ) ARE GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Davis Community Television  
Individual Objectors