

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

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Kihei, Hawaii)
MB Docket No. 08-217
RM-11434

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 15, 2009

Released: April 17, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making issued at the request of Shirk-Mays, LLC ("Petitioner"); and (2) supporting comments filed by the Petitioner. No other comments were received. For the reasons discussed below, we will grant the rulemaking petition.

2. Background. In response to the Petitioner's rulemaking petition, the NPRM proposed the allotment of Channel 264C2 at Kihei, Hawaii, as a third local aural service. The Petitioner filed comments, supporting the NPRM's proposal. The Petitioner also reiterated its intention to apply for Channel 264C2 at Kihei and promptly to construct a facility after grant of the application.

3. Discussion. We will allot Channel 264C2 to Kihei because it will serve the public interest by providing a third local service to that community. As described in the NPRM, Kihei has been previously recognized by the Commission as a community for allotment purposes. Kihei is located on the island of Maui and is a Census Designated Place with a population of 16,749. Further, in compliance with the Commission's new procedures, the Petitioner filed a construction permit application for the requested channel and paid the necessary filing fee.

4. Channel 264C2 can be allotted to Kihei at the Petitioner's requested site, which is approximately 17 kilometers (11 miles) southeast of Kihei in compliance with the Commission's minimum distance separation requirements. The reference coordinates for Channel 264C2 are 20-39-36 NL and 156-21-50 WL.

1 Kihei, Hawaii, Notice of Proposed Rule Making, 23 FCC Rcd 15778 (MB 2008) ("NPRM").

2 Kihei currently has licensed Station KAOI(AM), 1110 kHz, and an outstanding construction permit for a new FM station on Channel 298C2 (File No. BNPH-20070226AEQ). In addition, two reserved band FM applications are pending for Channels 205 and 209 at Kihei that are in the same mutually exclusive group, consisting of several dozen applications. See File Nos. BNPED-20071012AEF and BNPED-20071022BDI.

3 See File No. BNPH-20070723AEJ

4 47 C.F.R. § 73.207.

5. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, IT IS ORDERED, That effective June 1, 2009, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Kihei, Hawaii	264C2

6. A filing window for Channel 264C2 at Kihei, Hawaii, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the rulemaking petition (RM-11434) filed by Shirk-Mays, LLC IS GRANTED.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau