

BEFORE THE HEARINGS OFFICER

29025 KLAMATH COUNTY, OREGON

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1
2 In the Matter of Request for)
3 Conditional Use Permit No. 19-83)
4 for Oregon Broadcasting Company)
5

6 A hearing was held on this matter on August 18, 1983 and
7 continued to a hearing on September 15, 1983, pursuant to notice
8 given in conformity with Ordinance No. 45.1, Klamath County,
9 before the Klamath County Hearings Officer, Jim Spindor. The
10 applicant was present. The Klamath County Planning Department
11 was represented by Jonathan Chudnoff. The Hearings Reporter was
12 Karen Alberto.

13 Evidence was presented on behalf of the Department and on
14 behalf of the applicant. There was testimony presented from
15 persons in favor of and in opposition to the request.

16 The following exhibits were offered, received, and made a
17 part of the record:

18 Klamath County Exhibit A, Staff Report
19 Klamath County Exhibit B, Applicant's Attachments 1-4
20 Klamath County Exhibit C, Assessor's Map
21 Klamath County Exhibit D, Photos
22 Klamath County Exhibit E, FCC Rules
23 Klamath County Exhibit F, FCC Construction Permit
24 Klamath County Exhibit G, BLM Press Release
25 Klamath County Exhibit H, Forest Service Electronic Site
26 Management Plan
27 Klamath County Exhibit I, Packet from Del Cantrall (Letter
28 and FCC Regulations)

'83 OCT 4 PM 12 32

- 1 Klamath County Exhibit J, Letter from Robert Byrne 8-17-83
- 2 Klamath County Exhibit K, Testimony from Frank Plass 8-22-83
- 3 Klamath County Exhibit L, Testimony on Tape from Doc Wolf
- 4 dated 8-23-83
- 5 Klamath County Exhibit M, Topographic Map
- 6 Klamath County Exhibit N, Letter and Information from
- 7 Theron Smith of Motorola dated 9-9-83
- 8 Klamath County Exhibit O, KOTI Harmonics Diagrams and Figures
- 9 Klamath County Exhibit P, Letter from Leslie Smith of
- 10 Telecomm Systems, Inc., dated 9-8-83
- 11 Klamath County Exhibit Q, Statement of William B. Smullin
- 12 Klamath County Exhibit R, BLM Memorandum dated 9-14-83
- 13 Klamath County Exhibit S, Further Discussion of Channel 2
- 14 Transmitter Interference
- 15 Klamath County Exhibit T, Letter from Valley Industrial
- 16 Communications dated 9-11-83
- 17 Klamath County Exhibit U, Photos of Stukel Radio Sites
- 18 Klamath County Exhibit V, Copy of Herald and News Page 37
- 19 from the 8-28-83 Edition
- 20 Klamath County Exhibit W, Letter from Frank Plass dated
- 21 9-14-83 and Attached Material
- 22 Klamath County Exhibit X, ORFIC Site Standards
- 23 Klamath County Exhibit Y, Rough Draft, BLM Activity Plan
- 24 for Stukel Mountain
- 25 The hearing was then closed. Thereafter, the following
- 26 exhibits were offered by opponents: Letter from Frank Plass,
- 27 dated 9-19-83 and Letter and technical data from Tim Plass dated
- 28 9-20-83. Said exhibits were not received as evidence and were not

1 considered by the Hearings Officer.

2 Based upon the evidence submitted at the hearings, the
3 Hearings Officer made the following Conclusions of Law:

4 1. The proposed use is conditionally permitted within the
5 zone within which it is proposed to be located.

6 2. The location, size, design and operating characteristics
7 of the proposed use are in conformance with the Klamath County
8 Comprehensive Plan, so long as the conditions set forth herein-
9 below are followed.

10 3. The location, size, design and operating characteristics
11 of the proposed use will be compatible with and will not adversely
12 affect the appropriate development or use of abutting properties,
13 so long as the conditions set forth hereinbelow are followed.

14 4. The location, design and site planning of the proposed
15 use will provide a convenient and functional working environment
16 and will be as attractive as the nature of the use and its loca-
17 tion and setting warrant, so long as the conditions set forth
18 hereinbelow are followed.

19 5. The granting of this conditional use permit is consistent
20 with the goals of the LCDC so long as the conditions imposed here-
21 inbelow are followed.

22 6. This conditional use permit is granted subject to the
23 following conditions:

24 CONDITIONS:

25 a. Applicant shall follow all terms and conditions for
26 their operation as set by the Federal Communications Commission.

27 b. Applicant shall follow all terms and conditions for
28 their operation as set by the Bureau of Land Management.

1 c. Applicant shall follow all terms and conditions for
2 their operation as set by the Federal Aviation Administration.

3 d. Applicant shall obtain legal access to the site if
4 applicant has not already done so.

5 FINDINGS OF FACT:

6 The requested use has been granted with conditions based
7 on the following findings of fact:

8 1. The request is for a conditional use permit for a public
9 utility in the F-I zone. The site is approximately one quarter
10 mile by one quarter mile, is rectangular in shape and is only
11 partly used. The site is on Stukel Mountain, which is located
12 approximately ten miles southeast of Klamath Falls, Oregon.
13 Stukel Mountain is 6,525 feet high and is the second highest
14 peak within a twenty-five mile radius of Klamath Falls.

15 2. This request is made by the Oregon Broadcasting Company,
16 operator of KOTI Television in Klamath Falls. The proposed use
17 is a television transmission tower. The company plans to relocate
18 its transmitter from the present location above Old Fort Road to
19 Stukel Mountain. The signal strength will be increased. The
20 intent of the move is to provide a clear signal for Klamath Falls
21 and the rest of the Klamath Basin by using one of the highest
22 hills in the area.

23 3. Three other transmitters are already located on Stukel
24 Mountain, the nearest one being approximately 170' north of
25 applicant's proposed tower. These transmitters are owned by the
26 FAA, Motorola, Inc., and Frank Plass. Currently there are 42
27 communication site users on the mountain. Forty are located in
28 a single building owned by Frank Plass of Tulelake, California.

1 Motorola, Inc., provides mobile two-way radio service for private
2 parties in Klamath Falls, Oregon. The Federal Aviation Adminis-
3 tration has 160 acres under a withdrawal from the Bureau of Land
4 Management for aviation purposes. They have a direction finding
5 antenna and a remote air-ground radio linking in-flight aircraft
6 to the in-flight control center in Auburn, Washington.

7 4. The towers of Frank Plass and Motorola, Inc., have
8 approximately 100 watts of power, while applicant's tower will
9 have 35,500 watts (35.5 kilowatts). Some of the radios trans-
10 mitting to the Plass and Motorola, Inc., towers have only one
11 watt of power.

12 5. The Federal Communication Commission has ultimate
13 control over matters concerning the operation of such trans-
14 mission towers including those in existence at the site as well
15 as the proposed tower. The FCC has the power to and will require
16 applicant not to cause any interference with existing towers and
17 their service. Therefore, the operation of applicant's tower will
18 be subject to the terms and conditions of the FCC on a continuing
19 basis.

20 6. The site is located on Bureau of Land Management land,
21 and therefore, the BLM has the power to and will require applicant
22 not to cause any interference with the existing towers and their
23 service. Therefore, the operation of applicant's tower will be
24 subject to the terms and conditions of the BLM on a continuing basis.

25 7. The Federal Aviation Administration has jurisdiction to
26 impose conditions on applicant's operation including but not limited
27 to the requirement of side lights on the tower and a flashing red
28 beacon on the top. Therefore, the applicant's operation will be

1 subject to the terms and conditions of the FAA on a continuing basis.

2 8. Proponents and opponents disagree as to whether the instal-
3 lation of applicant's tower will cause interference problems for
4 the existing towers. Opponents contend that there will be sub-
5 stantial interference problems for the existing towers, while
6 proponents contend there will be no such problems.

7 9. Proponents and opponents both agree that should any inter-
8 ference problems be caused to the existing transmitters at the site,
9 that the technical knowledge and ability do exist to solve any pro-
10 blem.

11 10. Proponents and opponents both agree that it is not unusual
12 to have a mixture of electronic communication users at the site
13 including the type of mixture which will exist upon the installa-
14 tion of applicant's tower. However, opponents contend that the
15 fact that the low power transmitters were in operation first will
16 cause more problems than if the opposite were true.

17 11. The property is a steep ridgetop with Class VI and VII
18 soils. It is part of a BLM grazing lease, but this portion of
19 the land has no actual grazing use.

20 12. Part of the property has a Class V timber productivity
21 rating (capable of producing 50-85 cubic feet of timber annually
22 per acre). There are no trees on or adjacent to the tower site.

23 13. Stukel Mountain is a major landmark, with an elevation of
24 6,525 feet, and is visible from most parts of the Klamath Basin.
25 The proposed tower, like the existing ones, would have a very
26 slim profile and would not change the mountain's profile.

27 14. The operation will not be the source of air, water, or
28 land pollution.

1 15. The area has a high fire hazard rating. The operation
2 of the transmitter would not involve continued human presence or
3 traffic, adding little to the fire danger. The present towers do
4 not appear to have added to the fire hazard.

5 16. The installation and operation of the transmitter would
6 not affect the need for or availability of recreational facilities.

7 17. Except during construction, the transmitter would not
8 affect employment or the Klamath County economy.

9 18. The transmitter would not affect the need for or avail-
10 ability of housing in the Klamath Basin.

11 19. The transmitter would require electrical service which
12 can be extended from the existing line off Stukel Mountain.

13 20. Access is via dirt roads which cross private and public land.

14 21. Relocating the tower to the requested site would not
15 affect energy conservation.

16 22. The property is outside any urban or urbanizing area.
17 The tower is intended to improve television service for the Klamath
18 Falls urban area as well as the smaller towns of Merrill, Malin,
19 Tulelake, and Bonanza.

20 The Hearings Officer, based on the foregoing Findings of
21 Fact, accordingly orders as follows:

22 That real property described as

23 "being generally located on Stukel Mountain, and
24 more particularly described as the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section
15, Township 40, Range 10, Klamath County, Oregon,"

25 is hereby granted, with conditions, a Conditional Use Permit in
26 accordance with the terms of the Klamath County Zoning Ordinance
27 No. 45.1, and, henceforth, will be allowed a public utility
28 facility in the F-I zone.

17024

Entered at Klamath Falls, Oregon, this 3rd Day of
OCTOBER, 1983.

KLAMATH COUNTY HEARINGS DIVISION

E. S. Spindler

Hearings Officer

STATE OF OREGON,)
County of Klamath)
Filed for record at request of

on this 4th day of October A.D. 19 83
at 12:32 o'clock P M, and duly
recorded in Vol. M83 of Deeds
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EVELYN BIEHN, County Clerk

By *Ann Smith* Deputy

Fee None