

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

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-120
Table of Allotments,)	RM-9902
FM Broadcast Stations.)	
(Meeker and Craig, Colorado))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 21, 2000

Released: June 30, 2000

Comment Date: August 21, 2000

Reply Comment Date: September 5, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Western Slope Communications, L.L.C. ("petitioner"), permittee of Station KAYW, Channel 251C, Meeker, Colorado, requesting the reallocation of its channel to Craig, Colorado, and modification of its authorization accordingly.

2. This request was filed pursuant to Section 1.420(i) of the Commission's Rules 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. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Under Community of License we determine whether the proposed reallocation will result in a preferential arrangement of channels. In this situation, that determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities"), 90 FCC 2d 88 (1982).¹

3. In support of the proposal petitioner notes that while the removal of Channel 251C at Meeker would leave that community without a local transmission service, its removal will not deprive the community of an existing broadcast facility as Station KAYW has not been constructed. Farmington and Gallup, New Mexico, 11 FCC Rcd 2357 (1996), recon. den., 14 FCC Rcd 18983 (1999). Further, petitioner asserts that adoption of its proposal would result in a preferential arrangement of allotments consistent with the Commission's change of community procedures. According to petitioner, the reallocation of Channel 251C to Craig (pop. 8,091)² would enable it to

¹ 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).]

² Population figures reported herein were taken from the 1990 U.S. Census.

provide primary service to a population of 20,245 persons in an area of 25,609 square kilometers. Within the projected primary service area, petitioner advises that the reallocation of Channel 251C to Craig would result in a preferential arrangement of allotments as it will allow Station KAYW to provide a first fulltime service to 514 persons within an area of 2,999 square kilometers, and a second fulltime service to 30 persons within an area of 272 square kilometers, thus triggering FM allotment priorities one and two. Additionally, petitioner advises that the reallocation to Craig would provide a third fulltime service to 25 persons within an area of 204 square kilometers, a fourth fulltime service to 464 persons within an area of 267 square kilometers, and a fifth such service to 514 persons in an area of 296 square kilometers. By contrast, petitioner reports that Station KAYW as a Meeker station would provide 1 mV/m service to 25,541 people and encompass 18,264 square kilometers. With regard to the projected loss area at Meeker, petitioner advises that no white or gray areas would be created.³ Moreover, within the projected loss area, petitioner reports that 6,588 persons will continue to receive five or more fulltime aural services, whereas 599 persons in an area of 71 square kilometers will continue to receive four fulltime aural services, 739 persons in an area of 87 square kilometers will continue to receive three fulltime aural services, and 358 persons in an area of 42 square kilometers will continue to receive two fulltime services. While the reallocation would leave Meeker devoid of a local aural transmission service, petitioner states that there are a variety of lower class channels that can be allotted in the event there is a future interest in providing a local transmission service at that community.

4. In further support of the reallocation of Channel 251C to Craig, petitioner comments that the terrain surrounding Meeker severely limits the transmitter site locations for Station KAYW where 3.16 mV/m signal strength coverage of the community can be achieved. As a result, petitioner alleges that compliance with Section 73.315(a) would restrict primary service coverage to the most populous areas in the region and therefore would economically hamper Station KAYW's ability to sustain its operation at Meeker. Conversely, petitioner avers that the proposed site at Craig at coordinates 40-20-35 NL and 108-04-56 WL, located in less severe terrain, will comply with the requirements of Section 73.315(a) of the Commission's Rules, and enable it to maximize coverage and service to the residents in the surrounding area, including the provision of new service to white and gray areas.

5. A staff engineering review of this proposal reveals that neither Meeker nor Craig are located in or proximate to any urbanized area. Further, we have determined that the loss area of Channel 251C at Meeker contains 16,374 people and covers 3,453 square kilometers, while the gain area at Craig contains 4,141 people in an area encompassing 11,365 square kilometers. Therefore, the reallocation of Channel 251C would produce a net loss in population served of 12,233 people at Meeker and a net gain in area served of 7,912 square kilometers at Craig. Further, our analysis has determined that while the reallocation proposal would not result in the creation of any white or gray areas at Meeker, neither would the gain area of Channel 251C at Craig provide service to the degree indicated by the petitioner. While our analysis has determined that there are indeed a few sections of either white or gray areas in

³ For purposes of FM allotments, a white area is a geographical area that is not served by any full-time aural service and a gray area is one that is served by only one full-time aural service.

the gain area at Craig, the petitioner's projections differ significantly from our findings. Specifically, we have preliminarily determined that the white area of Channel 251C at Craig encompasses 189 square kilometers but contains a zero population count. Likewise, the gray area within the gain area at Craig contains 802 people and covers 2,568 square kilometers.⁴ A review of the petitioner's engineering exhibits also reveals that rather than assuming omnidirectional signals for all FM services that overlap any part of the gain/loss areas, it used the effects of terrain factors on the signal propagation for all fulltime services at each respective community, and their effect on both the existing and proposed service to be provided by Station KAYW. Moreover, petitioner's engineering analysis did not consider vacant allotments as a service in the gain/loss areas, and also excluded stations which would overlap any part of the gain/loss areas. Furthermore, our analysis has determined that the following stations or vacant allotments were excluded from consideration within the gain areas: (1) Station KFRZ, Channel 221C, Green River, Wyoming; (2) vacant Channel 231C2, Walden, Colorado; (3) Station KXRQ, Channel 232C1, Roosevelt, Utah; (4) Station KYCS, Channel 236C, Rock Springs, Wyoming; (5) Station KQSW, Channel 243C, Rock Springs; (6) vacant Channel 247C1, Dinosaur, Colorado; (7) Station KIFX, Channel 253C2, Roosevelt, Utah; (8) vacant Channel 255A, Steamboat Springs, Colorado; (9) Channel 273C, Craig, Colorado (construction permit issued); (10) Station KFMU-FM, Channel 281C3, Oak Creek, Colorado; (11) Station KSIT, Channel 283C, Rock Springs, Wyoming; and (12) Station KSKE-FM, Channel 284C1, Vail, Colorado. When those additional services are considered, it significantly reduces the petitioner's claimed primary service to white or gray areas.

6. Although petitioner alleges that terrain limitations at Meeker would severely hamper the economic viability of Station KAYW, if constructed, its primary obligation is to serve its community of license,⁵ and does not justify reallocating the channel under the FM Allotment Priorities. In the Community of License, 4 FCC Rcd 4870 (1989), the Commission stated that "... adherence to the allotment criteria will ensure that any exchange involving a change in the community of license will be made in the public interest and not solely in the financial interests of the participants." Moreover, the Commission has previously determined that economic issues are not relevant in the allotment or licensing context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993); and Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11927 (1995).

7. With respect to the requested removal of Channel 251C at Meeker, representing that community's only potential service, the Commission has not consistently expressed the same concerns regarding loss areas where the station has not been constructed. Each proposal must be viewed in light of our policies and precedent to determine whether the reallocation request would result in a preferential arrangement of allotment. See Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997). Based upon the information before us, we have preliminarily determined that this

⁴ Our analysis is based upon the use of Map Info. Version 4.0 which contains 1990 U.S. Census data.

⁵ Our engineering review has determined that from the presently authorized site for Station KAYW(FM) at coordinates 39-58-18 NL and 108-02-23 WL, a 70 dBu signal will encompass the entire boundaries of Meeker.

proposal would not provide a first fulltime service to any populated area. While it does appear that the proposal would provide a second fulltime service to 802 people (priority two), it would also result in a fourth local transmission service at Craig (priority four), and must be comparatively considered with retention of the only potential local transmission service at Meeker (priority three). Therefore, we request the petitioner to submit additional information as to the overall public interest benefits that would be advanced from the grant of its proposal. In addition, petitioner is requested to submit additional engineering information to support its claim of service to the unserved areas at Craig. Such information should include a map clearly labeling the sections claimed to constitute the white areas, plotting the contours as omnidirectional signals.

8. In consideration of the above, we will propose to reallocate Channel 251C from Meeker to Craig, Colorado, as requested, and to modify the authorization for Station KAYW contingent upon the successful demonstration that a first fulltime service would be provided at the latter community. Pursuant to Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional channel at Craig.

9. Channel 251C can be allotted to Craig consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's selected site located 49.6 kilometers (30.8 miles) southwest of the community at coordinates 40-20-35 NL and 108-04-56 WL.

10. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Craig, Colorado	229C1, 273C	229C1, 251C, 273C
Meeker, Colorado	251C	--

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before August 21, 2000, and reply comments on or before September 5, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel as follows:

Tom W. Davidson, Esq.
Michael K. Hamra, Esq.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
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Washington, DC 20036

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any

comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) 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 PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.