

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.
(Grants and Church Rock, New Mexico)
MB Docket No. 05-263
RM-11269

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 23, 2007

Released: May 25, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. In response to a Petition for Rule Making filed by Millennium Media, Inc. ("Petitioner"), licensee of Station KYVA-FM, Grants, New Mexico, the Audio Division considers herein a Notice of Proposed Rule Making ("Notice") proposing the reallocation of Channel 279C0, Grants, New Mexico to Church Rock, New Mexico (RM-11269) and the modification of KYVA-FM's license accordingly. Petitioner filed Comments and Reply Comments in support of its proposal to provide a first local aural transmission service to Church Rock. Sierra H. Broadcasting, Inc., licensee of FM Station KNRJ, Payson, Arizona, filed Reply Comments. Sanpete County Broadcasting Co., Marathon Media Group, LLC, Colleege Creek Broadcasting, LLC; and Sky Media, LLC (collectively, "Joint Parties I") filed a Counterproposal ("Joint Parties I Counterproposal") and "Reply Comments and Errata." Smoke and Mirrors, LLC, Colleege Creek Broadcasting, LLC, and Desert Sky Media, LLC (collectively, Joint Parties II") also filed a Counterproposal ("Joint Parties II Counterproposal") and "Reply Comments and Errata." As explained below, we are modifying the license of Station KYVA-FM, Channel 279C0, Grants, New Mexico, to specify Church Rock as the community of license. In addition, we dismiss both Counterproposals as unacceptable for consideration.

2. Counterproposals. The Joint Parties I Counterproposal proposes to allot Channel 262C1 to Hanksville, Utah, as that community's first local service. To accommodate this allotment and other allotments necessitated by the new allotment to Hanksville, Joint Parties I propose 10 other channel modifications, including several changes in communities of license, as well as the provision of first local services to Enoch and Cleveland, Utah. To accommodate the Channel 262C1 allotment at Hanksville, Joint Parties I propose that Sanpete County Broadcasting Co., which holds a Channel 263C construction permit at Monroe, Utah, substitute Channel 264C for Channel 263C, reallocate Channel 264C to

1 Grants and Church Rock, New Mexico, 20 FCC Rcd 13841 (MB 2005).

2 At the time the referenced Petition for Rule Making was filed, Station KYVA-FM operated on Channel 279C. Subsequently, Station KYVA-FM's allotment and license were modified to specify Channel 279C0.

3 We also grant the separate Requests to Correct Coordinates filed by both Joint Parties I and Joint Parties II. These separate requests ask that the staff correct certain latitude and longitude coordinates that were initially placed by the staff in the Consolidated Data Base System for aspects of the Joint Parties I and II Counterproposals.

Enoch, Utah, and modify its permit accordingly. This reallocation would provide Enoch with its first local aural transmission service.⁴ To accommodate the allotment of Channel 264C to Enoch, Utah, Marathon Media Group, LLC, the licensee of FM Station KPLD, Channel 266C, Kanab, Utah, has agreed to reallocate Channel 266C from Kanab, Utah, to Indian Springs, Nevada, as that community's second local service.⁵ To further accommodate the allotment of Channel 264C at Enoch, Utah, Sky Media, LLC, the licensee of Station KPKK, Amargosa Valley, Arizona, agrees to substitute Channel 276C for Channel 266C1 at Amargosa Valley and to modify the KPKK license accordingly.

3. We have determined that the Joint Parties I Counterproposal must be dismissed as unacceptable for consideration because it was not substantially complete and technically correct at the time of filing.⁶ The reallocation of Channel 266C from Kanab, Utah, to Indian Springs, Nevada, would create a short spacing with FM Station KRRK, Channel 266C0, at Lake Havasu City, Arizona.⁷ Figure 14 of the Engineering Statement attached to Joint Parties I's Counterproposal mentions the foregoing conflict and suggests the possible reallocation of Channel 266C0 from Lake Havasu City to Spring Valley, Arizona. Nevertheless, the Joint Parties I Counterproposal did not specify a site for this reallocation, or state Joint Parties I's willingness to reimburse Smoke and Mirrors, LLC, the licensee of FM Station KRRK, for the costs associated with changing its transmitter site and community of license, or establish whether Smoke and Mirrors, LLC was willing to relocate the transmitter site to accommodate the Joint Parties I Counterproposal. Thus, given the short spacing between the Joint Parties I proposal to reallocate Channel 266C from Kanab, Utah, to Indian Springs, Nevada, and Channel 266C0 of FM Station KRRK at Lake Havasu City, Arizona, the Counterproposal is technically defective and is unacceptable for consideration.

4. The Joint Parties II Counterproposal consists of the proposed allotment of Channel 256C to Ely, Nevada, and 23 other channel modifications necessitated by the Ely allotment, including many changes in communities of license. One of Joint Parties II's proposals requires the substitution of Channel 251C for Channel 239C at St. Johns, Arizona. In 2000, five years prior to the filing of the Joint Parties II Counterproposal, the Commission modified the license of Station KZUA-FM, Holbrook, Arizona, to specify Channel 253C1 in lieu of Channel 221C1 and reserved the new Channel 253C1

⁴ Since this reallocation would remove the only local service at Monroe, College Creek Broadcasting, LLC ("College Creek") proposes to upgrade its construction permit for Channel 271C2 at Castle Dale, Utah, to Channel 271C1, and to reallocate Channel 271C1 to Monroe. Assuming that Channel 271C2 is removed from Castle Dale, Joint Parties I proposes to use the former transmitter site for Channel 271C2, Castle Dale, for a new allotment, Channel 269C2, at Cleveland, Utah.

⁵ In order to maintain the sole local service at Kanab, College Creek proposes to reallocate its construction permit for Channel 276C, Hurricane, Utah, to Kanab. In order to maintain the sole local service at Hurricane, Canyon Media Corp. proposes to reallocate its Channel 260C, Station KONY(FM), from St. George, Utah, to Hurricane, Utah. In order to accommodate the allotment of Channel 276 C to Kanab, Joint Parties I proposed channel changes at Fredonia, First Mesa, and Teec Nos Pos, Arizona.

⁶ See, e.g., *Broken Arrow and Bixby, Oklahoma*, Memorandum Opinion and Order, 3 FCC Rcd 6507, 6511 (MMB 1988); *Springdale, Arkansas, Carthage et al., Missouri*, Memorandum Opinion and Order, 5 FCC Rcd 1241 (MMB 1990).

⁷ See 47 C.F.R. § 73.207.

allotment for Holbrook in the FM Table of Allotments.⁸ The Joint Parties II proposal for Channel 251C1 at St. Johns, Arizona, is 38.4 kilometers short spaced to the reserved Channel 253C1 allotment.⁹ Thus, Joint Parties II's proposal to substitute Channel 251C for Channel 239C at St. Johns, Arizona, renders the Joint Parties II Counterproposal unacceptable for consideration, because it was mutually exclusive with the reserved allotment for Channel 253C1 and thus was not substantially complete and technically correct at the time of its filing. Therefore, we dismiss the Joint Parties II Counterproposal as unacceptable for consideration.

5. We observe that another significant defect exists with respect to "Step 23" of the 24 steps in the Joint Parties II Counterproposal. In this step, Joint Parties II propose to substitute Channel 290A for vacant Channel 269C3 at Bagdad, Arizona, in order to accommodate the proposed allotment of Channel 266C to Spring Valley, Nevada. In virtually all cases, we will not downgrade a "drop-in" channel, especially if the vacant channel has not yet been subject to a window for the filing of applications for that channel. Joint Parties II rely on *Bethel Springs, Tennessee, et al.*, ("*Bethel Springs*")¹⁰ for the principle that the Commission will allow the downgrading of a drop-in channel to advance Priorities 1, 2, or 3 of the FM allotment priorities.¹¹ Joint Parties II's reliance on *Bethel Springs* is misplaced. In *Bethel Springs*, we approved a downgrade of a Tiptonville, Tennessee, allotment to permit another channel to provide first local service to South Fulton, Tennessee. Significantly, a construction permit for the Tiptonville allotment had been previously issued and the permittee had allowed the permit to expire. No window has been opened and no permit has been issued for Channel 269C3 at Bagdad, Arizona.

6. Because the Joint Parties I and II Counterproposals have been dismissed, Petitioner's proposal is now the only matter before us. Petitioner is the licensee of Station KYVA-FM, Channel 279C0, at Grants, New Mexico. Petitioner seeks to reallocate Channel 279C0 from Grants to Church Rock, New Mexico, and to modify its license for Station KYVA-FM accordingly. Petitioner filed comments and reply comments in which it reiterates its intent to effectuate its proposal. Petitioner made the reallocation request in this docket pursuant to Section 1.420(i) of the Commission's Rules,¹² 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 competing expressions of interest.¹³ In considering a reallocation

⁸ *Holbrook, Arizona*, Report and Order, 15 FCC Rcd 10893 (MMB 2000).

⁹ On March 27, 2007, the Media Bureau granted Petracom of Holbrook, L.L.C.'s construction permit application implementing the channel change from Channel 221C1 to Channel 253C1 (File No. BPH-20061222ACL).

¹⁰ Memorandum Opinion and Order, 17 FCC Rcd 14472 (MB 2002).

¹¹ 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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR 2d 448 (1983).

¹² 47 C.F.R. § 1.420(i). Under our recently revised procedures for requesting changes in community of licensee, see note 12, *supra*, FM change of community requests should now be made pursuant to Section 73.3573 of the Commission's Rules.

¹³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. In this instance, the proposed reallocation will allow the establishment of a first local transmission service at Church Rock, New Mexico, a Census Designated Place with a 2000 U.S. Census population of 1,077 persons. Petitioner has submitted sufficient information to demonstrate that Church Rock is a community to which an FM channel may be allotted. Provision of first local service falls under priority (3) of the FM priorities and is preferred to the retention of a third local service to Grants, New Mexico (2000 U.S. Census of 8,806 persons), which falls under priority (4) of the FM allotment priorities.¹⁴ In light of all the relevant factors in this case, we find that changing Station KYVA-FM's community of license from Grants to Church Rock, New Mexico, would serve the public interest. Further, the allotment of Channel 279C0 to Church Rock would not deprive Grants of its sole local transmission outlet, because Grants will retain local service from AM Station KMIN and FM Station KDSK.

7. Consistent with the technical requirements of the Commission's Rules, Channel 279C0 can be allotted to Church Rock, New Mexico, utilizing coordinates of 35-36-18 NL and 108-41-11 WL, with a site restriction of 11.2 kilometers (6.9 miles) northwest of Church Rock.

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. 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 July 6, 2007, the Media Bureau's Consolidated Data Base System will reflect Channel 279C0, Church Rock, New Mexico, as the reserved assignment for Station KVYA-FM in lieu of Channel 279C0, Grants, New Mexico.

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Millennium Media, Inc. for Station KYVA-FM, Grants, New Mexico, IS MODIFIED to specify operation on Channel 279C0 at Church Rock, New Mexico, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to 47 C.F.R. Section 1.1104(3)(l), Millennium Media, Inc., licensee of Station KYVA-FM, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for Station KYVA-FM, from Channel 279C0, Grants, New Mexico, to Channel 279C0, Church Rock, New Mexico, at the time it submits its Form 301 application.

¹⁴ *See* note 11, *supra*, for the FM allotment priorities.

12. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-11269) filed by Millennium Media, Inc. IS GRANTED.

13. IT IS FURTHER ORDERED, That the Counterproposal filed by Sanpete County Broadcasting, Inc; Marathon Media Group, LLC; College Creek Broadcasting, LLC and Sky Media, LLC IS DISMISSED.

14. IT IS FURTHER ORDERED, That the Counterproposal filed by Smoke & Mirrors, LLC; College Creek Broadcasting, LLC; and Desert Sky Media, LLC IS DISMISSED.

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

16. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2187.

FEDERAL COMMUNICATIONS COMMISSION

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