

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 01-249
Table of Allotments,	)	RM-10272
FM Broadcast Stations.	)	
(Telluride and Norwood, Colorado)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 2001

Released: September 21, 2001

Comment Date: November 13, 2001

Reply Comment Date: November 27, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch considers herein a petition for rule making filed on behalf of Rocky II Investments, Inc. (“petitioner”), licensee of Station KRYD, Channel 285C1, Telluride, Colorado, requesting the reallocation of Channel 285C1 to Norwood, Colorado, as that incorporated community’s first local aural transmission service, and modification of its license accordingly. Petitioner stated its intention to apply for Channel 285C1 if it is reallocated to Norwood, as requested.

2. Petitioner filed its rule making request pursuant to the provisions of Section 1.420(i) of the Commission’s Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License (“Change of Community R&O”), 4 FCC Rcd 4870 (1989), recon. granted in part (“Change of Community MO&O”), 5 FCC Rcd 7094 (1990).

3. In support of the proposal petitioner states that the requested reallocation of Channel 285C1 to Norwood is mutually exclusive with its existing authorization at Telluride. The distance between Telluride (pop. 1,309)<sup>1</sup> and the petitioner’s specified site at Norwood (pop. 438), is 0.4 kilometers, whereas a minimum distance of 245 kilometers is required in this instance.<sup>2</sup> In further support of the proposal, petitioner asserts that its proposal would fulfill a higher allotment priority<sup>3</sup> by providing a

<sup>1</sup> Population figures reported herein were taken from the 1990 U.S. Census Reports.

<sup>2</sup> Coordinates at the petitioner’s specified transmitter site at Norwood are 38-00-05 NL and 107-57-53 WL. The authorized site of Station KRYD(FM) at Telluride are located at coordinates 37-59-57 NL and 107-57-42 WL.

<sup>3</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See, Revision of FM

first local aural transmission service to Norwood, while Telluride will continue to receive local service provided by noncommercial educational Station KOTO.<sup>4</sup> Further, petitioner asserts that the proposed use of Channel 285C1 at Norwood is consistent with the technical requirements of the Commission's Rules as only a slight change in transmitter site to a location 0.4 km (0.2 mi.) southeast of its current location is specified for purposes of this rule making proceeding. In this regard, petitioner's technical engineering statement advises that the currently authorized site of Station KRYD was originally authorized pursuant to § 73.215 of the Rules. Further, petitioner reports that due to terrain conditions in that area of Colorado, locating the reference site in the community of Norwood would not allow for the maximization of service of a theoretical C1 facility due to the requirement for an extremely tall tower. Although petitioner advises that if its reallocation proposal is adopted, it intends to apply for Channel 285C1 at Norwood, specifying the existing KRYD site, in order to assure compliance with the minimum distance separation requirements of Section 73.207(b)(1), it has proposed a fully-spaced allotment reference site for Channel 285C1 as indicated above, which we are designating for purposes of this rule making proceeding. See Princeton and Elk River, Minnesota, 13 FCC Rcd 22806 (1998). Additionally, petitioner points out that its proposal will not be relocating Station KRYD from a rural to an urbanized area.<sup>5</sup>

4. In consideration of the above, and on a comparative basis, we believe that the petitioner's proposal warrants consideration as the reallocation request could provide Norwood with its first local aural transmission service without depriving Telluride of local aural transmission service. Therefore, we shall propose to modify the petitioner's license for Station KRYD to specify Norwood as its community of license. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 285C1 at Norwood, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

5. A staff engineering analysis has determined that Channel 285C1 can be allotted to Norwood

---

Assignment Policies and Procedures 90 FCC 2d 88 (1982).

<sup>4</sup> Additionally, petitioner advises that an application for a construction permit to operate on Channel 214A at Telluride has been filed (File No. BPED-9980529MF). However, the Commission has stated that with regard to change of community requests, neither a vacant allotment nor a construction permit can be considered as a substitute for an operating station. See Change of Community MO&O, supra. Therefore, it is our view that the pending application is comparable to the vacant allotment and unbuilt construction permit referred to by the Commission.

<sup>5</sup> The closest urbanized area to this proposal is Grand Junction, Colorado, located more than 130 kilometers from the proposed reference site.

consistent with the technical requirements of Sections 73.207(b) and 73.315 of the Commission's Rules at the petitioner's specified allotment reference site located 32.1 kilometers (19.9 mi.) southeast of the community at coordinates 38-00-05 NL and 107-57-53 WL, and 0.4 kilometers (0.2 mi.) from the currently authorized transmitter site of Station KRYD. Moreover, as the reallocation proposal contemplates only a very minor change in Station KRYD's transmitter site, the predicted 60 dBu contour will not change significantly. Therefore, no white or grey areas will be created and only a negligible population gain and loss would result from the reallocation.

6. 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>
Norwood, Colorado	--	285C1
Telluride, Colorado	285C1	--

7. 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.

8. Interested parties may file comments on or before November 13, 2001, and reply comments on or before November 27, 2001, 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, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Barry D. Wood, Esq.  
 Stuart W. Nolan, Jr., Esq.  
 Wood, Maines & Brown, Chartered  
 1827 Jefferson Place, NW  
 Washington, DC 20036

9. 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.

10. 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 that 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 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.