

Federal Communications Commission DA 00-1560

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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.) (Las Vegas and Pecos, New Mexico)) MM Docket No. 00-5 RM-9752

REPORT AND ORDER (Proceeding Terminated)

Adopted: July 5, 2000

Released: July 14, 2000

By the Chief, Allocations Branch:

1. At the request of BK Radio ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 732 (2000), proposing the substitution of Channel 268C3 for Channel 268A at Las Vegas, New Mexico, the reallocation of Channel 268C3 to Pecos, New Mexico, as the community's first local aural service, and the modification of its construction permit (BPH-19960829MH) to specify operation on the higher class channel and Pecos as its community of license. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. As stated in the Notice, petitioner seeks the modification of its construction permit to specify a new community of license pursuant to the provisions of Section 1.420(i) of the Commission's Rules. In this connection, we find that Pecos is a community for allotment purposes, with a 1990 U.S. Census population of 1,012 people, its own local government, police and fire departments, kindergarten through 12th grade school system, numerous businesses, post office and separate zip code. In addition, the substitution of Channel 268C3 for Channel 268A could enable the station to provide service to an additional 66,339 people within a 2,286 square kilometer area.1 Neither Pecos nor Las Vegas are located within an Urbanized Area and neither the present Channel 268A at Las Vegas nor the proposed Channel 268C3 at Pecos will provide 70 dBu service to any part of an Urbanized Area. We recognize that the reallocation of Channel 268C3 to Pecos will result in a loss of service to 448 people within a 977 square kilometer area. However, this is a potential, rather than actual, service loss because petitioner's station at Las Vegas is unbuilt. Further, we have determined that this loss of potential service will not create either a white (no aural reception service) or gray (one aural reception service) area.2 Finally, Las Vegas, with a population of 14,753 people, will continue to receive local aural service from AM Stations KNMX and KFUN, noncommercial educational FM Station KEDP,

1 The Notice erroneously stated that the substitution and reallocation of Channel 268 would result in a population gain of almost 9,000 people.

2 Petitioner states that the entire loss area will continue to receive at least five aural services and is thus considered to be well-served.

Channel 216A, and commercial FM Stations KMDZ, Channel 244A, KBAC, Channel 251C, and KLVF-FM, Channel 264C3.³ While the Commission is concerned about any loss of service, whether actual or potential, we believe that the minimal loss of potential service, coupled with the fact that no white or gray reception areas will be created, negates our concerns in this area. Further, Las Vegas will continue to be well-served with at least five aural services. Therefore, we find that the provision of a first local aural service to Pecos will further a higher allotment priority than the channel's retention at Las Vegas (Priority (2) vs. Priority (3)), thus resulting in a preferential arrangement of allotments.⁴

3. Based on the above discussion, we believe the public interest would be served by substituting Channel 268C3 for Channel 268A and reallocating the channel from Las Vegas to Pecos, New Mexico, since it could provide Pecos with its first local aural service and enable the station to provide service to a greater number of people. As proposed, we will also modify petitioner's construction permit to specify operation on Channel 268C3 and Pecos as its community of license. Channel 268C3 can be allotted to Pecos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.7 miles) east to accommodate petitioner's desired transmitter site.⁵

4. Accordingly, pursuant to the 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 ORDERED, That effective August 28, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

³ In addition, the Commission has before it the applications of Abundant Life Broadcasting to operate a station on noncommercial educational Channel 212A (BNPED-19991119AAU), and Regents of the University of New Mexico to operate a station on noncommercial educational Channel 220A (BNPED-20000118ABX), as well as the proposal of Sangre de Cristo Broadcasting to allot commercial Channel 224A to Las Vegas (MM Docket 00-85).

A construction permit has also been issued to Meadows Media, LLC, for Station KTRL, Channel 275. On March 30, 2000, the Commission granted its one-step upgrade application from Class A to Class C2. Therefore, this Report and Order will also editorially change the Table of FM Allotments to reflect the allotment of Channel 275C2 in lieu of Channel 275A at Las Vegas. We note that on March 22, 2000, Meadows Media filed a petition for rule making to reallocate Channel 275, as a Class C3, to Pecos and modify Station KTRL's construction permit accordingly. On June 23, 2000, Meadows Media filed a new petition requesting the reallocation of Channel 275, also as a Class C3, to Rowe, New Mexico, and the modification of Station KTRL's construction permit accordingly, and on June 29, 2000, it filed a request to dismiss its earlier rule making request seeking the reallocation to Las Vegas.

⁴ The FM allotment priorities are: (1) first fulltime reception service; (2) second fulltime reception service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

⁵ The coordinates for Channel 268C3 at Pecos are 35-32-54 North Latitude and 105-35-18 West Longitude.

<u>City</u>	<u>Channel No.</u>
Las Vegas, New Mexico	244A, 251C, 264C3, 275C2
Pecos, New Mexico	268C3

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of BK Radio (BPH-19960829MH), IS MODIFIED to specify operation on Channel 268C3 and Pecos, New Mexico, as its community of license, in lieu of Channel 268A and Las Vegas, New Mexico, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (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 Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, BK Radio, permittee of BPH-19960829MH, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

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

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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