

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MMDocket No. 96-66
FM Broadcast Stations.) RM-8729
(Sibley, Iowa, and Brandon, South) RM-8821
Dakota))
)
)

DISPATCH UNIT
OCT 2 11 39 AM '00
FCC MAIL SECTION

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: September 27, 2000

Released: Septemebr 29, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Petition for Reconsideration filed by 21st Century Radio Ventures, Inc. ("21st Century") directed to the Report and Order in this proceeding. 13 FCC Rcd 22209 (1998). For the reasons discussed below, we deny the Petition for Reconsideration.

2. At the request of 21st Century, permittee of Station KAJQ, Channel 262A, Sibley, Iowa, the Notice of Proposed Rule Making in this proceeding proposed the substitution of Channel 261C3 for Channel 262A at Sibley, reallocation of Channel 261C3 to Brandon, South Dakota, and modification of the Station KAJQ construction permit to specify operation on Channel 261C3 at Brandon. 11 FCC Rcd 3635 (1996). In response to the Notice, Brandon Broadcasters filed a Counterproposal proposing the allotment of Channel 261A to Brandon, South Dakota. In the Report and Order, we allotted Channel 261A to Brandon as a first local service. In doing so, we stated that a Channel 261A allotment at Brandon and a Channel 262A allotment at Sibley was, compared to a single Channel 261C3 allotment at Brandon, the preferential arrangement of allotments required by 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). We also noted that the Channel 261A allotment at Brandon will provide service to 129,474 persons while the proposed upgrade and reallocation to Brandon would have resulted in a net service gain to 128,180 persons.

3. In its Petition for Reconsideration, 21st Century contends that its upgrade proposal would have resulted in the preferential arrangement of allotments. In this regard, 21st Century notes that in a separate proceeding, it had proposed a Channel 282A allotment at Sibley. This allotment would provide service to the area and population that would lose service resulting from its proposed reallocation to Brandon. As such, its proposed upgrade would provide service to 146,523 persons compared to the Channel 261A allotment at Brandon that would serve 129,474 persons. 21st Century also contends that the Report and Order was inconsistent with the Allocation Branch decision in Llano and Marble Falls, Texas, 12 FCC Rcd 6809 (1997).

4. We deny the Petition for Reconsideration. First of all, considering a separate Petition for Rule Making filed by 21st Century in MM Docket No. 98-219 in the context of this proceeding would have not

altered our underlying decision. Even though the proposed allotment of Channel 282A to Sibley would potentially negate the loss of a first local service at Sibley and serve the population that will lose service by reallocating Channel 261C3 to Brandon, we continue to believe that a Channel 262A allotment at Sibley and a Channel 261A allotment at Brandon is preferable to a single Channel 261C3 allotment at Brandon. In addition, our earlier decision was consistent with Commission policy that an increase in an authorized service does not provide as great a public benefit as a new primary service. See Benton, Clarksville, Dardanelle, Hampton, Harrison, Huntsville, Meva, Ozark and Sherwood, Arkansas, Homer, Louisiana, Sallisaw and Vinita, Oklahoma, Hooks and Gilgord, Texas, 2 FCC Rcd 1963 (1987). There is nothing in the record of this proceeding that would justify a departure from this policy. Even assuming that the proposed upgrade and reallocation to Brandon would serve 146,523 persons compared to the 129,474 persons that will receive service from the new Channel 261A allotment at Brandon, both of these areas and populations receive at least five services and are considered to be well-served. LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995). As such, this population differential would not be of decisional significance.

5. Our decision in this proceeding is also consistent with Llano and Marble Falls, Texas, supra. In that proceeding, we substituted Channel 285C3 for Channel 284C3 at Llano, reallocated Channel 285C3 to Marble Falls, and modified the license of Station KBAE to specify operation on Channel 285C3 at Marble Falls. In doing so, we recognized that we were removing the sole local service from Llano. In order to alleviate this concern, the proponent in that proceeding also proposed the allotment of Channel 242A to Llano. After dismissing two competing counterproposals as either defective or untimely, we did, in fact, reallocate Channel 285C3 to Marble Falls. To address the concern of removing the sole local service from Llano, we allotted Channel 242A to Llano in order to maintain a local service. Llano and Marble Falls, Texas is distinguishable from this proceeding for two reasons. First, the proponent in that proceeding proposed the allotment of Channel 242A to Llano as a replacement for the removal of the sole local service. As a consequence, we were able to consider and allot Channel 242A to Llano in the context of that proceeding. In contrast, 21st Century filed a separate Petition for Rule Making to allot Channel 282A to Sibley. At the time of the Report and Order in this proceeding, there was no assurance, whatsoever, that a replacement channel would be allotted to Sibley to address the concern of removing a sole local service. Second, reallocating Channel 285C3 to Marble Falls did not necessitate the denial of any competing proposal. On the other hand, in order to reallocate Channel 261C3 to Brandon in this proceeding, it would have been necessary to deny a competing proposal for a new primary service at Brandon.

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by 21st Century Radio Ventures, Inc. IS DENIED.

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

8. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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