

FCC MAIL ROOM

Federal Communications Commission

DA 01-193

2001 JAN 29 A 11:54

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

In the Matter of

UNITED

)
)
)
)
)
)

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Las Vegas and Rowe, New Mexico)

MM Docket No. 00-155
RM-9924

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 17, 2001

Released: January 26, 2001

By the Chief, Allocations Branch:

1. At the request of Meadows Media, LLC ("petitioner"), permittee of Station KTRL, Las Vegas, New Mexico, the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 15902 (2000), proposing the substitution of Channel 275C3 for Channel 275C2, the reallocation of the channel from Las Vegas to Rowe, New Mexico, as its first local aural service, and the modification of Station KTRL's construction permit accordingly. Comments were filed by the petitioner. No other comments were received.

2. Petitioner's request was filed pursuant to Section 1.420(i) of the Commission's Rules which allows 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. See, Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Community of License MO&O"), 5 FCC Rcd 7094 (1990). It stated that the proposal, if granted, would result in a preferential arrangement of allotments since it would provide Rowe with its first local aural service without depriving Las Vegas of its sole local aural service.

3. As pointed out in the Notice, Rowe is not incorporated or listed in the U.S. Census. Rowe is listed in the Rand McNally Commercial Atlas and Marketing Guide, 131st edition, and attributed with a population of 250 people, and it has a post office which offers post box service only. Therefore, we requested that the petitioner furnish information to demonstrate that Rowe has the social, economic, and cultural indicia to qualify as a community for allotment purposes and to show that these entities identify themselves with Rowe. In response, petitioner points out that Rowe is home to the Native American Preparatory School, with over 100 faculty and students and that such necessities as groceries, gasoline and propane are available at Ilfeld's store, located at the southern edge of Rowe. It states that the limited shopping presently available does not "provide a valid basis" to provide Rowe with its own radio station but contends that the development of a business community has been "hobbled" by the lack of a local medium of mass communications. Petitioner also acknowledges that Rowe has no public library but points out that it is served bi-weekly by the State mobile library. Rowe

also does not have its own fire department but rather is part of the Rowe-Ilfield Volunteer Fire Department (and district) but states that the San Miguel County Fire Marshall has advised the petitioner that the county will soon begin construction of a new and separate firehouse in Rowe. Petitioner also says that community organizations consist of the Rowe Water Users Association which oversees the provision of drinking water to the community and the Rowe Landfill Association which completed an 8 acre city park this past summer. According to the petitioner, the park, which was created with volunteer labor and the Youth Conservation Corps, includes playground equipment, a basketball court, baseball field, exercise trail and other amenities. The park is also the site of the planned fire department. In response to the Notice's request for further information concerning the location of the Sagrada Familia Rowe Holy Catholic Church, petitioner states that the Church has no "address" within Rowe at this time but that it is located in the heart of Rowe, with numerous homes surrounding it. In fact, it states that there are no formal street addresses for any of the homes and businesses in Rowe but the community is sufficiently close-knit to make the need for such addresses less than compelling. However, petitioner says that the County, in cooperation with the U.S. Postal Service, is in the process of issuing such formal street addresses and provides a map, approved by the San Miguel County Planning and Zoning Office, which shows street names and the location of the Church and the post office. Petitioner also provides a letter from Rowe resident Juanita Sandoval stating that the residents "come together" for precise needs, such as worshipping, celebrations, and mourning losses. Finally, petitioner argues that the population estimate of 500-600 people by Rowe's postmistress is more accurate than the 250 people specified in the Rand McNally Commercial Atlas. It bases this on: (1) the County Fire Marshall saying that the 136 people who signed a petition circulated in Rowe concerning the establishment of a separate fire station represents no more than a third of Rowe's population as other residents either were not at home or were unwilling to sign the petition; and (2) the population of New Mexico is concentrated in valley settlements such as Rowe where water is available and not in the surrounding mesas and mountains where water is less plentiful, if available at all. Therefore, petitioner concludes that Rowe meets the standard for allotment of an FM channel, that is "a geographically identifiable population grouping" and thus is a community for Section 307(b) purposes, citing Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd 2 FCC Rcd 7562 (1987), and Seven Locks Broadcasting Co., 37 FCC 82, 84 (1964).

4. As set forth in the Notice, Rowe is not located within the Santa Fe or any other Urbanized Area, and, as proposed, the allotment will not provide a 70 dBu signal to 50% or more of any Urbanized Area. However, a staff engineering review found that the reallocation would result in a potential loss of service by 3,843 people within a 5,040 square kilometer area.¹ Further, within this loss area, 974 people will remain underserved with only one fulltime aural service. The staff study also found that the net gain in population served of 50,102 people, within an area of 1,286 square kilometers, are all presently receiving at least two or more fulltime aural services. Therefore, petitioner was requested to provide further information to demonstrate that the reallocation to Rowe would result in a preferential arrangement of allotments. In response, petitioner states that it "assumes the

¹ The petitioner did not provide an engineering study showing the areas and populations which would gain and lose service if Channel 275C3 is reallocated to Rowe, or the reception services presently available within these areas.

referenced service is either FM radio broadcast station KLVF or FM radio broadcast station KBAC, Las Vegas, New Mexico. Both stations cover a greater area than would KTRL, based on the facilities which its present construction permit allow." In addition, it states that since the issuance of the Notice, Station KMDZ, Channel 244A, Las Vegas, New Mexico, has begun broadcasting and its 60 dBu contour is also greater in all directions than that predicted for Station KTRL.² Thus, it contends that the 974 people referenced by the Commission as receiving only one fulltime aural service should, in fact, receive at least two services without taking into account the proposed operation of Station KTRL.

5. We have carefully reviewed the pleadings before us and find that the substitution of Channel 275C3 for Channel 275C2 at Las Vegas, its reallocation to Rowe, and the modification of Station KTRL's construction permit accordingly, would not result in a preferential arrangement of allotments. Based on the information provided by the petitioner and the staff's independent research, we find that it has not been demonstrated that Rowe possesses the necessary indicia to qualify as a community for allotment purposes. As stated in the Notice, Rowe is not incorporated or listed in the U.S. Census, but the Rand McNally Commercial Atlas (2000 edition) attributes it with a population of 250 people. Petitioner disputes this figure but has not provided any official or verifiable evidence to the contrary. To support its contention that Rowe has a population of at least 500 people, petitioner says that (1) the Rowe postmistress states that 220 mail boxes are rented out and between 500 and 600 people receive their mail from the facility and (2) the San Miguel County Fire Marshall says that the 136 signatories to a petition concerning a new fire station represents about one-third of Rowe's population. However, beyond these statements by the petitioner, no showing was presented which documents these figures or demonstrates that the people renting post office boxes and/or signing the petition reside within Rowe as opposed to outlying areas who use the services provided by the post office and fire station.³

6. Rowe also has no local school, library, shopping, or other services normally associated with a community, with the exception of a church. We disagree that the existence of the Native American Preparatory School ("NAPS") can be considered a Rowe facility. NAPS is not located in Rowe and it is not designed to serve the educational needs of the residents of Rowe. Instead, according to the information provided by the petitioner and staff research, NAPS, which has a Rowe post office box for some of its correspondence, is an independent residential school whose mission is to provide a college preparatory education to Native Americans and whose student body is comprised of children not from Rowe but from all over the United States.⁴ As to petitioner's assertion that Rowe has community organizations, namely the Rowe Water Users Association and Rowe Landfill Association, it has not

² Petitioner states that Station KMDZ filed an application for license to cover its construction permit on September 14, 2000.

³ In this connection, we note that mail addressed to Rencona, New Mexico, which shares the Rowe zip code (87562), is received at the Rowe post office. See, www.jcsm.com.

⁴ While the NAPS campus is located on 1,600 acres in the Pecos River Valley, and has a Rowe post office box for mail, people who are seeking information concerning the students and ways to support the school are advised to call its Santa Fe office. See, petition for rule making, Exhibit 1, The Native American Preparatory School, pg. 2.

provided any documentation concerning the Water Users Association such as the names and addresses of its members, its organization charter or its authority to provide water service to the residents of Rowe. It did provide a newspaper article concerning the recreation park from which it appears that the creation was an area-wide effort using volunteers who are residents not only of Rowe, but also Pecos, Ilfeld and San Juan, and that the park is intended to serve the needs of the region rather than those of just Rowe. As to local businesses, petitioner states that residents of Rowe can purchase most necessities from Ilfeld's store, and provides a photograph of the store, but there is no indication that the store is actually located within Rowe or that it is intended to serve the needs of the residents as opposed to outlying areas or travelers along Interstate Route 25.⁵ Nor does it appear that any of the other businesses identified by the petitioner, such as Rowe Mesa Homes, Rowe Mesa Telecommunications Site, Adelante Plumbing and Heating, Santa Fe Firewood, Johnny's Towing, Tom's Upholstery Shop, Johnny's Tire Repair, and Amazing Gates of Santa Fe, are designed to serve the needs of Rowe as opposed to the surrounding area, including nearby Santa Fe. We also find unpersuasive the argument that a local radio station is needed to aid in the development of a business community that has been "hobbled" by the lack of a station which is focused on the need for local businesses to publicize their existence and provide potential customers with information.⁶ We recognize that the Commission has found locations with minimal population and community indicia to be communities for allotment purposes. However, although Rowe is somewhat rural in nature it is not so isolated that it can be considered in the same context as Cal-Nev-Ari with regard to survival issues. See, Cal-Nev-Ari, Boulder City and Las Vegas, Nevada, 14 FCC Rcd 17153 (1999). In addition, Rowe receives service from stations licensed to nearby Santa Fe and will also receive service from a new FM station recently allotted to Pecos, which is less than six miles away.⁷ Therefore, based on the information presented, we conclude that Rowe does not have sufficient indicia to qualify as a "community" for allotment purposes.

7. Even if we were to find that Rowe is a community for allotment purposes, we have determined that the Commission's allotment priorities and our policies pursuant to Change of Community, supra, also require the retention of Channel 275C2 at Las Vegas.⁸ As stated in the Notice, the allotment of Channel 275C3 at Rowe will enable Station KTRL to provide an additional service to 53,945 people within a 1,286 square kilometer area, as well as a first local service to the 250 residents of Rowe. All of the gain area already receives at least two fulltime aural services. However,

⁵ We note that there is no listing for the store in CenturyTel's February 2000 edition of the Rowe-Pecos-Glorieta-Terrero telephone book provided by the petitioner.

⁶ In its petition for rule making, petitioner stated that "[w]ith so many services available by Interstate just 25 minutes away in Santa Fe or Las Vegas (only ten minutes away in Pecos), Rowe has had little need to develop much in the way of retail establishments. . . ." See Exhibit 1, page 2, and fn. 5 of the Notice of Proposed Rule Making.

⁷ See, Las Vegas and Pecos, New Mexico, 15 FCC Rcd 12726 (2000).

⁸ The allotment priorities are: (1) first fulltime aural reception service; (2) second fulltime aural reception service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

the reallocation and downgrade of Station KTRL will also result in a loss of service to 3,843 people within an area of 5,040 square kilometers. Further, within this loss area, 974 people, within a 1,591 square kilometer area, will become underserved by having only one fulltime aural reception service. Petitioner, in its comments, disputes that the reallocation will result in the creation of any underserved population, stating that all of the population within the loss area will receive at least a second service from either Station KLVF or KBAC. However, the staff's review of petitioner's submission shows that it based its showing of Class A facilities for Station KTRL instead of Class C2 facilities, as authorized by the grant of its one-step upgrade application (BMPH-1991220ACQ).⁹ Therefore, the proper coverage showing is that which arises from use of maximum Class C2 facilities, not Class A. We recognize that the Commission's allotment priorities give co-equal weight to the provision of first local and second fulltime reception service. However, we find that the provision of a second fulltime reception service to four times as many people as would receive a first local service clearly demonstrates that the public interest would be better served by the retention of Channel 275C2 at Las Vegas. Likewise, as stated in Change of Community (MO&O), *supra*, proposed reallocations must also take into account the Commission's concern about any loss of service, regardless of whether it is a transmission or reception service. Even though the concern is lessened by the fact that the loss in this case represents a potential service, as opposed to an actual service from a station that is already on the air, we find that the provision of a second fulltime reception service to nearly 1,000 people outweighs the provision of a first local service to a much smaller population, none of whom are underserved. Therefore, even if we were to find that Rowe is a community for allotment purposes, we believe that the public interest would be better served by the retention of Channel 275C2 at Las Vegas.

8. Accordingly, IT IS ORDERED, That the petition for rule making filed by Meadows Media, LLC (RM-9924), requesting the substitution of Channel 275C3 for Channel 275C2, the reallocation of Channel 275C3 from Las Vegas to Rowe, New Mexico, and the modification of Station KTRL's construction permit accordingly, IS DENIED.

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

⁹ Petitioner's Class C2 application was granted on March 30, 2000, and the Table of FM Allotments was amended by Order, released August 11, 2000. See, Various Locations, 15 FCC Rcd 14996 (2000).

10. 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**