

FED MAIL ROOM

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

2004 APR 14 A 4: 29

In the Matter of)
)
)
Amendment of Section 73.202(b),)
Table of allotments,)
FM Broadcast Stations.)
(Alva, Mooreland, Tishomingo, Tuttle and)
Woodward, Oklahoma))

MM Docket No. 98-155
RM-9082
RM-9133
FILED

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: April 4, 2001

Released: April 13, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration filed by Ralph Tyler directed to the Report and Order in this proceeding. DA 00-2885 (released December 22, 2000). Chisholm Trail Broadcasting Co., Inc. ("Chisholm Trail") filed a Motion for Leave to Accept Opposition to Petition for Reconsideration, an Opposition to Petition for Reconsideration and a Reply to Opposition to Motion for Leave to Accept Opposition to Petition for Reconsideration. Ralph Tyler filed an Opposition to Motion for Leave to Accept Opposition to Petition for Reconsideration and a Reply to Late Filed Opposition to Petition for Reconsideration.¹ For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of FM 92 Broadcasters, Inc., licensee of Station KMZE, Channel 221C3, Woodward, Oklahoma, the Notice of Proposed Rule Making and Order to Show Cause in this proceeding proposed the allotment of Channel 283C1 to Moreland, Oklahoma, and the substitution of Channel 228A for Channel 261C1 at Woodward, Oklahoma, and the modification of the Station KWFX license to specify operation on Channel 228A at Woodward. At the request of Ralph Tyler, licensee of Station KTSH, Channel 259C3, Tishomingo, Oklahoma, the Notice also proposed the reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modification of the Station KTSH license to specify Tuttle as the community of license. To accommodate the reallocation of Channel 259C3 to Tuttle, the Notice proposed the substitution of Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and modification of the Station KNID license to specify operation on Channel 260C1. The Report and Order allotted Channel 283C1 to

¹ In support of its Motion for Leave to File Opposition to Petition for Reconsideration, Chisholm Trail states that its Opposition to Petition for Reconsideration was prepared and ready for delivery to the Commission on the due date of February 27, 2001. However, the courier service did not pick up the Opposition for delivery until the next day thereby rendering the submission untimely. The failure to assure a timely delivery does not represent the degree of diligence expected in rulemaking proceedings. Nevertheless, we will consider the Opposition to Petition for Reconsideration. This consideration has not delayed our resolution of this proceeding and will enable us to resolve this proceeding on the basis of a complete record.

Moreland, Oklahoma, as a first local service. On the other hand, the Report and Order denied the Ralph Tyler proposal to reallocate Channel 259C3 from Tishomingo to Tuttle and modify his Station KTSH license to specify Tuttle as the community of license. The reason for that denial was that the sole remaining local service in Tishomingo, noncommercial educational Station KAZC, does not provide any portion of Tishomingo with the principal city 70 dBu signal and provides only 23% of the Station KTSH service area with a primary 60 dBu signal. As such, we concluded that Station KAZC was not an adequate replacement service and that we would, in effect, be removing the sole local service from Tishomingo.

3. In his Petition for Reconsideration, Ralph Tyler contends that the Report and Order was inconsistent with prior actions and that we should have considered a Station KAZC application that will eventually provide a principal city signal to all of Tishomingo and replicate the existing Station KTSH service area. In this regard, Ralph Tyler reiterates that his proposal will provide a first local service to Tuttle and argues that the existing Station KAZC is, in fact, a replacement service because it complies with all Commission technical requirements with respect to the noncommercial educational FM service.

4. We deny the Petition for Reconsideration. It continues to be our view that the existing noncommercial educational Station KAZC service is not an adequate substitute for the removal of Station KTSH from Tishomingo. Our Rules require a commercial station to provide a significantly higher level of technical service to a community of license compared to a noncommercial educational station licensed to the same community.² Even though Station KAZC complies with all technical requirements with respect to the noncommercial educational service and has an obligation to serve Tishomingo, the fact remains that the residents of Tishomingo would not have the commensurate level of technical service currently being provided by Station KTSH. In fact, Station KAZC does not provide a 70 dBu signal to any portion of Tishomingo. Cf. Everglades City, LaBelle, Estero and Key West, Florida, 15 FCC Rcd 9427 (2000). It is for this reason that the current Station KAZC service is not an adequate substitute and that the removal of Station KTSH would be analogous to the removal of a sole local service. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094 91990), the Commission addressed the removal of a sole local service from a community as "presumptively" diserving the public interest. The underpinning for this policy is that the public has a legitimate expectation that its existing local service will continue. In this connection, the Commission stated that a vacant allotment or unbuilt construction permit does not adequately cure the disruption of this service. In this situation, we recognize that the proposed reallocation will provide a first local service to Tuttle and that a Station KAZC application filed January 26, 2001, may eventually replicate the Station KTSH local service at Tishomingo. In regard to these factors, the Commission has specifically stated that the expectation of continuing local service is a factor that must be weighed independently against any service benefits. It is also our view that the pending Station KAZC application is comparable to the vacant allotment and unbuilt construction permit referred to by the Commission and does not cure this disruption in service.

5. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Ralph Tyler IS DENIED.

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

² Section 73.315(a) of the Rules requires a commercial FM station to provide a 70 dBu signal to all of its community of license. Until January 19, 2001, there was no similar coverage requirement for a noncommercial educational FM station. Section 73.515 of the Rules now requires a noncommercial educational FM station to provide a 60 dBu signal to at least 50% of the community of license or 50% of the population within that community.

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

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
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