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Federal Communications Commission DA 01-1081

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

2001 APR 30 P 1:13

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-6
Table of Allotments,)	RM-9791
FM Broadcast Stations.)	RM-9890
(McCook, Alliance, Imperial, Nebraska, and)	
Limon, Parker, Aspen, Avon, and Westcliffe,)	
Colorado) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 25, 2001

Released: April 27, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making, 15 FCC Rcd 738 (2000), and an Order to Show Cause, 15 FCC Rcd 22439 (2000), in this proceeding. McCook Radio Group, LLC ("McCook Radio") and The Meadowlark Group, Inc. ("Meadowlark Group") filed Comments. McCook Radio, Meadowlark Group and Halstead Communications, Inc. ("Halstead Communications") filed Reply Comments. Meadowlark Communications, Halstead Communications and Imperial Media Association filed comments in response to the Order to Show Cause. For the reasons discussed below, we are allotting Channel 271C1 to McCook, Nebraska, reallocating Channel 276C to Parker, Colorado, and making related channel substitutions at Alliance and Imperial, Nebraska, and Aspen, Avon and Westcliffe, Colorado.

Background

2. At the request of McCook Radio, the Notice proposed the allotment of Channel 271C1 to McCook, Nebraska as a sixth local service. In response to the Notice, Meadowlark Group, permittee of Station KAVD, Channel 276C1, Limon, Colorado, filed a Counterproposal. In its Counterproposal, Meadowlark Group proposes the substitution of Channel 276C for Channel 276C1 at Limon, its reallocation to Parker, Colorado, and the modification of the Station KAVD construction permit to specify operation on Channel 276C at Parker. To accommodate the Station KAVD upgrade and change of community, Meadowlark Group also proposes the substitution of: (1) Channel 276C3 for Channel 249C3 at Aspen, Colorado, and the modification of the Station KSPN license to specify the alternate channel; (2) Channel 249C2 for Channel 276C2 at Avon, Colorado, and the modification of the Station KZYR's license to specify the alternate channel at a new transmitter site; (3) Channel 227A for vacant and unapplied-for Channel 276A at Westcliffe, Colorado; (4) Channel 263C1 for Channel 271C1 at Alliance, Nebraska, and the modification of the Station KPNY license to specify the alternate channel; and (5) Channel 271C for

¹ The communities of Alliance and Imperial, Nebraska, and Limon, Parker, Aspen, Avon and Westcliffe, Colorado, have been added to the caption.

Channel 275C at Imperial, Nebraska, and the modification of the Imperial Media Association construction permit (BPH-19970924ML) to specify the alternate channel. Two parties had not agreed to the proposed channel substitutions and modifications of their respective authorizations. Therefore, an Order to Show Cause was issued to Halstead Communications, licensee of Station KPNY, Channel 263C1, Alliance, Nebraska, and Imperial Media Association, permittee of a new station on Channel 275C at Imperial Nebraska. The proposed Channel 271C1 allotment at McCook is in conflict with the proposed Channel 271C substitution at Imperial.

3. Meadowlark Group filed its Counterproposal pursuant to Section 1.420(i) of the Commission's Rules which permits 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"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Allotment Policies and Procedures, 90 FCC 2d 88 (1982).² Meadowlark Group states that its proposal also complies with the Commission's policy of considering proposals where no more than two channel substitutions involving authorized stations are required because consent agreements have been obtained for all but one of the channel substitutions. See, Columbus, Nebraska, 59 RR 2d 1185 (1986) and Castle Rock, Colorado Springs, Frisco and Salida, Colorado, Raton, New Mexico, 7 FCC Rcd 7668 (1992), recon. denied, 8 FCC Rcd 4475 (1993). Meadowlark also states that it will reimburse all of the affected licensees for the reasonable expenses in changing channel and/or transmitter site in accordance with Circleville, Ohio, 8 FCC 2d 159 (1967).

4. The Meadowlark Group proposal for an upgrade and reallocation to Parker will result in a preferential arrangement of allotments as required by Community of License. It will provide Parker, population 5,450 persons, with its first local service, thus fulfilling allotment priority (3). Limon, population 1,831 persons, will continue to receive local aural service from Station KLIM. Parker is incorporated, with its own elected mayor and town council, police and fire departments, medical center, schools, library, businesses, churches and religious centers, chamber of commerce, numerous service organizations, including the Parker Optimist Club, Rotary Club, Sunrise Lions Club, etc., as well as its own post office and zip code. Two local newspapers also serve Parker, The Parker Trail and the Weekly News Chronicle. In addition, the reallocation of Channel 276C to Parker will enable Station KAVD to realize a net gain in population served of 1,515,568 persons within a 13,340 square kilometer area, and will not create any loss area. Further, this upgrade and reallocation will enable Station KAVD to provide a second aural reception service to an area of 1,892 square kilometers containing 1,062 people.

5. Halstead Communications filed comments in response to the Order to Show Cause objecting to the proposed modification of its Station KPNY license at Alliance. It argues that Channel 263C1 and its present Channel 271C1 are not equivalent. While it acknowledges that the substitute channel complies with the Commission's minimum distance separation requirements, it contends that the Station KPNY signal would suffer first adjacent channel interference in Scottsbluff, Nebraska, the largest market within Station KPNY's 60 dBu coverage area. While the station suffers from a weak signal in Scottsbluff due to intervening terrain, Halstead Communications states that the signal is free from co- and first-adjacent channel interference but, if modified to

² The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3),

operate on Channel 263C1, would experience "massive interference" within its 60 dBu contour from first adjacent Station KOLZ, Cheyenne, Wyoming.³ Halstead Communications goes on to state that the resulting loss of audience within the Scottsbluff area, a market which provides Station KPNY with substantial ad revenues and its largest listening audience, is a permanent injury which cannot be alleviated by the reimbursement of the expenses involved in changing channel.

6. In response to the Order to Show Cause, Meadowlark Group amended its Counterproposal to propose that Channel 276C be allotted to Parker by substituting Channel 275C0 for Channel 275C at Imperial, Nebraska, and that Imperial Media's outstanding construction permit be modified accordingly. Meadowlark Group states that subsequent to the filing of its Counterproposal, the Commission created a new FM Class C0 allotment classification, effective January 19, 2001.⁴ It states that if Channel 275C0 is allotted to Imperial, Station KAVD can be modified to operate on Channel 276C without requiring Station KPNY at Alliance to change its channel and without conflicting with the McCook Radio proposal to allot Channel 271C1 to McCook. Imperial Media consents to the modification of its outstanding construction permit to specify operation on Channel 275C0 and Meadowlark Group states that they have entered into a reimbursement agreement whereby it will reimburse Imperial Media for the reasonable costs of its downgrade in class. Halstead Communications filed comments supporting the Meadowlark Group amended Counterproposal and withdrawing its prior objection since it no longer will be required to change channels.

Discussion

7. It is Commission policy that requests for channel allotments will not be considered unless they comply with the technical and legal requirements in existence at the time the petition is filed. See, Farmington, California, et al., 10 FCC Rcd 9938 (1995) and Kaukauna and Cleveland, Wisconsin, 6 FCC Rcd 7142 (1991) (to be technically acceptable, proposal must comply with spacing requirements in effect when filed). In this case, Meadowlark Group filed its amended Counterproposal after the adoption of the new FM Class C0 allotment classification but before its effective date. We will consider the amended Counterproposal. It now complies with all Commission technical requirements and the underlying Meadowlark Group Counterproposal was in compliance with all Commission technical requirements at the time it was filed. As such, consideration of the amended Counterproposal would not be inconsistent with this policy. Cf. Cut and Shoot, Texas, 11 FCC Rcd 14631(1996). In a related context, we do not see any public interest benefit in dismissing the amended Counterproposal only to have Meadowlark Group, if it wished to pursue the proposal, immediately refile its Counterproposal as a new petition for rule making. In the meantime, we could be needlessly requiring Station KPNY to change its operating channel, with the attendant disruption of service to its listeners and operation, only to have to revisit this issue and possibly modify the Station KPNY license back to its original channel. The

³ Halstead Communications provides maps showing the 60 dBu and 54dBu contours, calculated in accordance with Section 73.313 of the Commission's Rules, as well as the actual predicted signal ratios when predicted via the Bullington total terrain methods. It states that the Bullington models predict that the desired to undesired ratios are 9 dB higher than the 6 dB prescribed for non-interference between first adjacent channel stations. In addition, the study shows, according to Halstead, that KOLZ is predicted to have a signal 3 dB stronger than Station KPNY's signal rather than 6 dB below the Station KPNY signal as required.

⁴ See, 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules ("Technical Streamlining Order"), Second Report and Order, FCC 00-368, 65FR 79773, December 20, 2000.

public interest would not be served by such an outcome. Finally, we believe that consideration of the Meadowlark Group amended Counterproposal will allow the public to benefit from the earlier initiation of a new service at McCook, as well as either an expanded service at Parker. This will also enable the Commission to more efficiently utilize its limited resources, and does not alter or diminish the Commission's policies concerning the acceptance of petitions for rule making.

8. The public interest will be served by allotting Channel 271C1 to McCook, Nebraska, as a new FM service and by substituting Channel 276C for Channel 276C1 at Limon, reallocating Channel 276C to Parker, as its first local aural service, and modifying the construction permit of Station KAVD accordingly. Parker is not located within an Urbanized Area and it will not place a 70 dBu signal over 50% or more of the Denver Urbanized Area. Parker, an incorporated community with a 1990 U.S. Census population of 5,450 people, has its own local government, police department, parks department, community center, civic organizations such as the Parker Cultural Commission, Parker Landmark Commission, Parker Optimist, American Legion, Rotary and Lions Clubs, medical center, chamber of commerce, as well as numerous businesses and religious institutions. To accommodate the allotment at Parker, we will also substitute Channel 275C0 for Channel 275C at Imperial, Nebraska, and modify Imperial Media's construction permit accordingly.

Technical Summary

9. Channel 271C1 can be allotted to McCook, Nebraska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.6 kilometers (12.2 miles) west, to avoid a short-spacing to Station KKQY, Channel 270C1, Hill City, Kansas, and the pending application of Station KRNY, Channel 272C1, Kearney, Nebraska.⁵ Channel 275C0 can be allotted to Imperial, Nebraska, at the site specified in Imperial Media's construction permit (BPH-19970924ML).⁶ Channel 276C can be allotted to Parker with a site restriction of 63.4 kilometers (39.4 miles) east to accommodate Meadowlark's desired transmitter site.⁷ Channel 249C2 can be allotted to Avon, Colorado, with a site restriction of 5.3 kilometers (3.3 miles) east.⁸ Channel 276C3 can be allotted to Aspen, Colorado, at Station KSPN-FM's licensed transmitter site.⁹ Channel 227A can be allotted to Westcliffe, Colorado, at the same coordinates as presently allotted Channel 276A.¹⁰

10. 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 June 12, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

⁵ The coordinates for Channel 271C1 at McCook, Nebraska, are 40-12-00 NL; 100-51-25.

⁶ The coordinates for Channel 271C0 at Imperial, Nebraska, are 40-45-31 NL; 101-52-32 WL.

⁷ The coordinates for Channel 276C at Parker, Colorado, are 39-26-08 NL; 104-02-05 WL.

⁸ The coordinates for Channel 249C2 at Avon, Colorado, are 39-37-52 NL; 106-27-42 WL.

⁹ The coordinates for Channel 276C3 at Aspen, Colorado, are 39-13-33 NL; 106-50-00 WL.

¹⁰ The coordinates for Channel 227A at Westcliffe, Colorado, are 38-04-28 NL; 105-32-13 WL.

<u>City</u>	<u>Channel No.</u>
Aspen, Colorado	276C3, 296C3
Avon, Colorado	249C2
Limon, Colorado	229A
Parker, Colorado	276C
Westcliffe, Colorado	227A
Imperial, Nebraska	275C0
McCook, Nebraska	230C2, 241C, 253C1, 271C1, 280C2, 287C1

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended: (1) the license of Salisbury Broadcasting Corporation for Station KSPN, Aspen, Colorado, IS MODIFIED to specify operation on Channel 276C3 in lieu of Channel 249C3, (2) the construction permit of Imperial Media Association for a new station (BPH-19970924ML) at Imperial, Nebraska, IS MODIFIED to specify operation on Channel 275C0 in lieu of Channel 275C, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KSPN's license, BLH-6841, or Imperial Media's construction permit, BPH-19970924ML), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-6841 and BPH-19970924ML except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the: (1) license of The Meadowlark Group, Inc., for Station KAVD, Limon, Colorado, IS MODIFIED to specify operation on Channel 276C, in lieu of Channel 276C1, and specify Parker, Colorado, in lieu of Limon, as its community of license; (2) license of AGM Rocky Mountain Broadcasting, I, L.L.C. for Station KZYR, Avon, Colorado, IS MODIFIED to specify operation on Channel 249C2 in lieu of Channel 276C2, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee 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.

13. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations

Division, shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the licensees/permittees, as follows:

Imperial Media Association
HC30 Box 157
McCook, NE 69001

AGM-Rocky Mountain Broadcasting I, L.L.C.
Station KZYR
1400 Easton Road
Bakersfield, CA 93303

Salisbury Broadcasting Corporation
Station KSPN
300 East Lombard
Baltimore, MD 31202

14. 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, The Meadowlark Group, licensee of Station KAVD, 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.

15. A filing window for Channel 271C1 at McCook, NE will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

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

17. 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