

Federal Communications Commission

DA 99-3004

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-76 /
Table of Allotments,) RM-9400
FM Broadcast Stations.)
(Silverton and Bayfield, Colorado))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 15, 1999

Released: December 23, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of Proposed Rule Making, 14 FCC Rcd 4071 (1999), issued in response to a petition for rule making filed on behalf of Voice Ministries of Farmington, Inc. ("petitioner"), permittee for a new FM broadcast station to operate on Channel 297C1 at Silverton, Colorado (File No. BPH-951020MA), proposing the reallocation of Channel 297C1 to Bayfield, Colorado, as that community's first local aural transmission service, and modification of its authorization to specify operation on Channel 296C. Petitioner filed comments stating its intention to apply for Channel 296C at Bayfield, if allotted. No other comments were received.

2. Petitioner's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station 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 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

3. As the petitioner intends to relocate its transmitter site to accommodate Channel 296C at Bayfield (pop. 1,090),¹ the Notice requested additional information regarding any potential gain and loss areas as well as the number of reception services that are presently available within the gain and loss areas. In response, petitioner advises that if Channel 296C is allotted to Bayfield, as requested, it will provide service to 101,780 people encompassed in an area of 16,021.25 square kilometers.² By comparison, petitioner advises that the current allotment of Channel 297C1 at Silverton (pop. 716), has a service area of 3,307 square kilometers containing a population of 4,295 persons.

¹ Population figures reported herein were taken from the 1990 U.S. Census.

² This figure includes a population of 1,384 people encompassed within the Silverton and Bayfield overlapping 60 dBu contours (the common area).

4. In further support of the proposal, petitioner advises that within the proposed gain area at Bayfield, the proposed allotment of Channel 296C will provide a first aural service to an area of 233.3 square kilometers and a second aural service to an area of 292.6 square kilometers, whereas the present Silverton allotment does not provide a first or second FM service to any areas. According to petitioner's engineering Declaration, no population figures are reported within the white and gray areas as those areas lie within rugged regions of the Rocky Mountains.

Additionally, petitioner reports that the Bayfield proposal will provide a third, fourth, fifth and sixth broadcast service to 1,265, 3,318, 119 and 97,078 persons respectively. In comparison, Channel 297C1 at Silverton would provide those services to the following populations: 64 (3d service), 9 (fourth service), 3 (fifth service) and 2,835 persons (sixth service), respectively. Further petitioner reports that the proposed gain and loss areas are already well served under the Commission's definition of at least five services. Therefore, petitioner urges that adoption of its proposal is superior to the present allotment of Channel 297C1 at Silverton as it would enable a new station to operate on Channel 296C at Bayfield to increase the degree of theoretical coverage within its projected 60 dBu contour and would result in a preferential arrangement of allotments.

5. A staff engineering analysis of the theoretical gain and loss projections differs from the petitioner's findings. Based upon the use of minimum Class C facilities at the proposed site at Bayfield, and employing an omni-directional antenna pattern, we find that the 60 dBu signal coverage projections would result in a total gain in service to 44,681 people in an area comprising 9,108.8 square kilometers. Service would also be provided to a white area consisting of 127.5 square kilometers containing a population of 121, as well as to a gray area comprising 350.3 square kilometers containing a population of 2,541 people. Additionally, we find that additional service would be provided as follows: a third service would be provided to 154 people in an area of 499 square kilometers; a fourth service to 3,204 people in an area of 831.9 square kilometers; a fifth service to 180 people in an area of 288.5 square kilometers; and an additional service to 38,481 people who presently receive five or more services in an area of 7,011.6 square kilometers. By comparison, based upon the use of maximum Class C1 facilities at the current site for Channel 296C1 at Silverton, a loss of service would occur to a 8,626 persons residing in an area of 9,120.9 square kilometers. Additionally, a white area loss would occur to 46 people within an area of 254 square kilometers, and a gray area loss would occur to 457 people in an area of 311.2 square kilometers.³

6. We believe the public interest would be served by reallocating Channel 297C1 from Silverton to Bayfield and modification of the petitioner's authorization to specify operation on Channel 296C at the latter community, as requested, as it will result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. *See Change of*

³ Petitioner's engineering analysis was based upon the use of minimal antenna height as presently authorized for Channel 296C1 rather than the maximum permitted facilities for Class C1 channels. Additionally, although the petitioner's study permissibly used minimum Class C facilities (*i.e.*, 100 kW ERP, 300 meters HAAT) for Bayfield, the analysis appears to be based on projected terrain effects on signal propagation rather than an omni-directional 60 dBu contour.

Community, supra. Applying those procedures, we compare the existing arrangement of allotments with the proposal using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992).⁴

7. In making our comparison, the first three allotment priorities are applicable here. Service would be provided to a white area (priority one) consisting of 121 people, and to a gray area (priority two) containing 2,541 people, and is larger than the theoretical loss at Silverton to 46 people in a white area and to 457 people in a gray area. With the exception of the white and gray areas common to both communities, each receive at least five full-time reception services. Although we would normally be reluctant to grant a proposal that would result in the loss of service to unserved/underserved areas, in this instance the gain at Bayfield outweighs the loss of service at Silverton.⁵ Additionally, a first local service would be provided to Bayfield⁶ (priority three), whereas Channel 297C1 remains at Silverton. In light of the above, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the construction permit issued to Voice Ministries of Farmington, Inc., (File No. BPH-951020MA) to specify operation on Channel 296C at Bayfield, Colorado.

8. As stated in the Notice, Channel 296C can be allotted to Bayfield, Colorado, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 0.35 kilometers (0.22 miles) southeast of the community at coordinates 37-13-32 NL and 107-35-53 WL.

9. 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 February 7, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Bayfield, Colorado	296C
Silverton, Colorado	279C2

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Voice Ministries of Farmington, Inc. (File No. BPH-951020MA), IS MODIFIED to specify operation on Channel 296C at Bayfield, Colorado,

⁴ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters [Co-equal weight is afforded priorities (2) and (3).]

⁵ A proposal to allot Channel 237A to Bayfield has been filed in MM Docket No. 99-103, 64 FR 17141, April 8, 1999.

in lieu of Channel 297C1 at Silverton, Colorado, 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), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (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.

11. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change in 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, Voice Ministries of Farmington, Inc., permittee of BPH-951020MA), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license and upgrade at Bayfield, Colorado.

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

13. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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