

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

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JUN 16 2004

FCC-MAILROOM

In the Matter of

Amendment of Section 73.202(b),)	MB Docket No. 02-290
Table of Allotments,)	RM-10527
FM Broadcast Stations.)	RM-10772
(Dinosaur and Rangely, Colorado, Franklin and)	RM-10773
Preston, Idaho, Beaver, Coalville, Elsinore,)	
Manila, Monroe, Nephi, Richfield, Smithfield and)	
Tremonton, Utah, and Fort Bridger, Green River,)	
Lyman, Rock Springs, Saratoga and Wamsutter,)	
Wyoming))	

REPORT AND ORDER

Adopted: June 8, 2004

Released: June 10, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding.¹ Millcreek Broadcasting, LLC, 3 Point Media-Franklin, LLC, Sanpete County Broadcasting Company, M. Kent Frandsen, Frandsen Media Company, LLC and Sun Valley Radio, Inc. ("Joint Parties") jointly filed a Counterproposal. 3 Point Media-Utah, LLC ("Media-Utah") filed a Counterproposal and Supplement. Rural Pima Broadcasting ("Rural Pima") filed Comments and Reply Comments. The Joint Parties filed Reply Comments. For the reasons discussed below, we are modifying the licenses of six stations to specify a new community of license. To accommodate these reallotments, we are substituting channels at ten communities. In addition, we are allotting a first local service to Manila, Utah.

Background

2. At the request of Rural Pima, the *Notice* proposed the allotment of Channel 249A to Manila, Utah, as a first local service. In response to the *Notice*, the Joint Parties filed a Counterproposal setting forth five reallotment proposals as well as related channel substitutions in six communities in Utah, Colorado, and Wyoming. Specifically, the Joint Parties propose the reallotment of five channels to specify a new community of license. Two of these reallotment proposals replace the loss of a sole local service. The proposed Channel 248C reallotment to Coalville, Utah, conflicts with the Channel 249A reallotment proposed in the underlying *Notice* in this proceeding. To accommodate these reallotment proposals, the Joint Parties propose channel substitutions at five communities. Media-Utah, licensee of Station KBNZ, Channel 285C, Tremonton, Utah, proposes the substitution of Channel 284C1 for Channel 285C at Tremonton, reallotment of Channel 284C1 to Lyman, Wyoming, and modification of the Station KBNZ license to specify operation on Channel 284C1 at Lyman. To accommodate this reallotment, Media-Utah proposes channel substitutions at four communities in Wyoming. The proposed Channel 250C2 substitution at Green River, Wyoming, conflicts with the Channel 249A proposal at Manila as set forth in the *Notice*.

¹ *Manila, Utah*, 17 FCC Rcd 18118 (MB 2002).

Discussion

3. **Franklin, Idaho, and Coalville, Utah.** As requested by the Joint Parties, we are substituting Channel 248C for Channel 248C1 at Franklin, Idaho, reallocating Channel 248C to Coalville, Utah, and are modifying the Station KTPM license to specify operation on Channel 248C at Coalville.² This reallocation will result in a preferential arrangement of allotments as required by the Commission in *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License").³ In reaching this determination, we compared the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ In this instance, the reallocation will provide a first competitive local FM service to Coalville and result in a net service gain to 1,124,733 persons. The population losing service will continue to be served by more than five services.⁵

4. We recognize that Station KTPM is the sole local service at Franklin. To replace this loss of local service, we are substituting Channel 255C3 for Channel 256C1 at Fort Bridger, Wyoming, reallocating Channel 255C3 to Franklin, and are modifying the Station KNYN license to specify operation on Channel 255C3 at Franklin.⁶ M. Kent Frandsen, one of the Joint Parties, is the licensee of Station KNYN and has agreed to this modification of the Station KNYN license. In order to replace the loss of the sole local service at Fort Bridger, we are substituting Channel 280C for Channel 280A at Smithfield, Utah, reallocating Channel 280C to Fort Bridger, and are modifying the Station KGNT license to specify operation on Channel 280C at Fort Bridger.⁷ Frandsen Media Company, LLC, also one of the Joint Parties, is the licensee of KGNT and has agreed to this modification of the Station KGNT license. To replace the loss of the sole local service at Smithfield, we are reallocating Channel 244C1 from Preston, Idaho, to Smithfield, Utah, and are modifying the Station KKEX license to specify Smithfield as the community of license.⁸ In addition to the fact that there will be no change in the Station KKEX facilities, Sun Valley Radio, Inc., licensee of Station KKEX, is one of the Joint Parties and has agreed to this modification of the Station KKEX license. Preston will continue to receive local service from Station KACH.

5. In order to accommodate Channel 280C at Fort Bridger, we are substituting channels at two communities. First, we are substituting Channel 256C for 280C at Nephi, Utah, and are modifying the Station KMDG license to specify operation on Channel 256C.⁹ Millcreek Broadcasting, LLC, licensee of

² The reference coordinates for the Channel 248C allotment at Coalville, Utah, are 40-55-46 and 111-00-26.

³ 4 FCC Rcd 4870 (1989), *recon.* 5 FCC Rcd 7094 (1990).

⁴ 90 FCC2d 88 (1988). 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).

⁵ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied*. FCC 83-559 (Comm'n Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

⁶ The reference coordinates for the Channel 255C3 allotment at Franklin, Idaho, are 42-10-05 and 111-48-38.

⁷ The reference coordinates for the Channel 280C allotment at Fort Bridger, Wyoming, are 41-19-00 and 110-23-01.

⁸ The reference coordinates for the Channel 244C1 allotment at Smithfield, Utah, are 41-52-18 and 111-48-31.

⁹ The reference coordinates for the Channel 256C allotment at Nephi, Utah, are 39-45-37 and 111-34-38.

Station KMDG, is one of the Joint Parties and has agreed to the channel substitution. Second, we are substituting Channel 295C1 for vacant Channel 279C1 at Rangely, Colorado.¹⁰ To accommodate Channel 256C at Nephi, we are substituting Channel 264C2 for vacant Channel 257C2 at Monroe, Utah.¹¹

6. In order to reallocate Channel 248C to Coalville, Utah, we are substituting Channel 249C for Channel 248C at Richfield, Utah, reallocate Channel 249C to Elsinore, Utah, and are modifying the Station KLGL license to specify operation on Channel 249C at Elsinore.¹² Sanpete County Broadcasting Company, licensee of Station KLGL and one of the Joint Parties, has agreed to this modification of the Station KLGL license at the new transmitter site. This will provide Elsinore with a first local service. Elsinore is an incorporated community with a U.S. Census 2000 population of 733 persons. It is governed by an elected mayor and council. The reallocation of Channel 249C to Elsinore requires two substitutions of vacant allotments. To this end, we are substituting Channel 259A for vacant Channel 246A at Beaver, Utah.¹³ Second, we are substituting Channel 266C1 for vacant Channel 247C1 at Dinosaur, Colorado.¹⁴ The Channel 266C1 substitution at Dinosaur requires that we also substitute Channel 234A for vacant Channel 266A at Wamsutter, Wyoming.¹⁵

7. **Tremonton, Utah, and Lyman, Wyoming.** As requested by Media-Utah, licensee of Station KBNZ, Channel 285C, Tremonton, Utah, we are substituting Channel 284C for Channel 285C at Tremonton, reallocate Channel 284C to Lyman, Wyoming, and are modifying the Station KBNZ license to specify operation on Channel 284C at Lyman.¹⁶ This will provide a first local service to Lyman while Tremonton will continue to receive local service from Station KACE. Lyman is an incorporated community with a 2000 U.S. Census population of 1,938 persons. Lyman is governed by an elected mayor and council. Lyman has a town attorney, police department, and a public works department for zoning and road maintenance. In addition to local churches and businesses, the Uinta County School District is located in Lyman and operates two elementary, one middle school and one high school in Lyman. The population losing service will continue to receive service from at least five stations.¹⁷

8. In order to accommodate the Channel 284C reallocation to Lyman, we are substituting Channel 259C for Channel 283C at Rock Springs, Wyoming, and are modifying the Station KSIT license to specify operation on Channel 259C.¹⁸ Big Thicket Broadcasting of Wyoming, Inc., licensee of Station KSIT, has now agreed to this modification of its Station KSIT license and Media-Utah has agreed to reimburse the licensee for the costs necessary to effectuate this modification of the Station KSIT license. To

¹⁰ The reference coordinates for the Channel 295C1 allotment at Rangely, Colorado, are 40-05-15 and 108-48-15.

¹¹ The reference coordinates for the Channel 264C2 allotment at Monroe, Utah, are 38-37-21 and 112-07-29.

¹² The reference coordinates for the Channel 249C allotment at Elsinore, Utah, are 38-16-23 and 112-09-13.

¹³ The reference coordinates for the Channel 259A allotment at Beaver, Utah, are 38-16-37 and 112-38-25.

¹⁴ The reference coordinates for the Channel 266C1 allotment at Dinosaur, Colorado, are 40-14-42 and 109-00-30.

¹⁵ The reference coordinates for the Channel 234A allotment at Wamsutter, Wyoming, are 41-40-18 and 107-58-18.

¹⁶ The reference coordinates for the Channel 284C allotment at Lyman, Wyoming, are 40-52-34 and 110-41-34.

¹⁷ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group, 53 RR 2d 662 (Rev. Bd. 1983), rev. denied FCC 83-559 (Comm'n Nov. 29, 1983); see also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).*

¹⁸ The reference coordinates for the Channel 259C allotment at Rock Springs, Wyoming, are 41-26-00 and 109-07-02.

accommodate Channel 259C at Rock Springs, we are substituting channels at three vacant allotments. First, we are substituting Channel 250C2 for vacant Channel 259C1 at Green River, Wyoming.¹⁹ We recognize that as a result of this downgrade of a vacant allotment, 2,643 fewer persons will receive service once this allotment eventually provides service. This downgrade will not result in any population receiving less than five services. In this instance, the downgrade will permit a first local service to Elsinore. Second, we are substituting Channel 282C for vacant Channel 261C at Wamsutter, Wyoming.²⁰ Third, we are substituting Channel 258A for vacant Channel 259A at Saratoga, Wyoming.²¹

9. **Manila, Utah.** As stated earlier, the Joint Parties proposal to reallocate Channel 248C to Coalville and the Media-Utah proposal to substitute Channel 250C2 at Green River conflicted with the proposed Channel 249A allotment set forth in the *Notice*. To accommodate both of the Counterproposals in this proceeding, we are allotting alternate Channel 228A to Manila, Utah.²² This will provide Manila (with a 2000 U.S. Census population of 308 persons) with a first local service. Manila is an incorporated community and the county seat for Daggett County. In addition to local businesses, Manila has its own post office and ZIP code.

10. Accordingly, pursuant to 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 July 26, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Dinosaur, Colorado	261C1
Rangely, Colorado	295C1
Franklin, Idaho	255C3
Preston, Idaho	-----
Beaver, Utah	259A
Coalville, Utah	248C
Elsinore, Utah	249C
Manila, Utah	228A
Monroe, Utah	264C2
Nephi, Utah	256C
Richfield, Utah	229C
Smithfield, Utah	244C1
Tremonton, Utah	-----
Fort Bridger, Wyoming	280C
Green River, Wyoming	250C2

¹⁹ The reference coordinates for the Channel 250C2 allotment at Green River, Wyoming, are 41-31-36 and 109-28-06.

²⁰ The reference coordinates for the Channel 282C allotment at Wamsutter, Wyoming, are 41-44-00 and 108-14-27.

²¹ The reference coordinates for the Channel 258A allotment at Saratoga, Wyoming, are 41-27-12 and 106-48-30.

²² The reference coordinates for the Channel 228A allotment at Manila, Utah, are 40-59-17 and 109-43-19.

Lyman, Wyoming	284C
Rock Springs, Wyoming	259C
Saratoga, Wyoming	258A
Wamsutter, Wyoming	234A, 282C

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of 3 Point Media-Franklin, LLC for Station KTPM, Channel 248C1, Franklin, Idaho, IS MODIFIED to specify operation on Channel 248C at Coalville, Utah, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may not be conducted in accordance with Section 73.1620 of the Commission's rules until Station KNYN commences operation on Channel 255C3 at Franklin, Idaho;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of M. Kent Frandsen for Station KNYN, Channel 256C1, Fort Bridger, Wyoming, IS MODIFIED, to specify operation on Channel 255C3 at Franklin, Idaho, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may not be conducted in accordance with Section 73.1620 of the Commission's rules until Station KGNT commences operation on Channel 280C at Fort Bridger, Wyoming;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

13. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Frandsen Media Company, LLC for Station KGNT, Channel 280A, Smithfield, Utah, IS MODIFIED, to specify operation on Channel 280C at Fort Bridger, Wyoming, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may not be conducted in accordance with Section 73.1620 of the Commission's rules until Station KKEX commences operation on Channel 244C1 at Smithfield, Utah;
- (c) Nothing herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Millcreek Broadcasting, LLC for Station KMDG, Channel 280C, Nephi, Utah, IS MODIFIED, to specify operation on Channel 256C, 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 construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

15. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Sanpete County Broadcasting Company for Station KLGL, Channel 248C, Richfield, Utah, IS MODIFIED, to specify operation on Channel 249C at Elsinore, Utah, 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 construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from

environmental processing.

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Sun Valley Radio, Inc. for Station KKEX, Channel 244C1, Preston, Idaho, IS MODIFIED, to specify operation on Channel 244C1 at Smithfield, Utah, 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 construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of 3 Point Media-Utah, LLC for Station KBNZ, Channel 285C, Tremonton, Utah, IS MODIFIED, to specify operation on Channel 284C at Lyman, Wyoming, 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 construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Big Thicket Broadcasting of Wyoming, Inc. for Station KSIT, Channel 283C, Rock Springs, Wyoming, IS MODIFIED, to specify operation on Channel 259C, 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 construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

19. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's Rules, 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 rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees receiving an upgrade and/or change in community of license are required to submit a rulemaking fee in addition to the fee required for the application to affect the upgrade and/or change in community of license.

20. A filing window for any allotment will not be opened at this time. Instead, four channels are being substituted for allotments listed on Auction 37, rescheduled for November 3, 2004. Specifically, Channel 266C1 is being substituted for the Channel 247C1 at Dinosaur, Colorado; Channel 264C2 is being substituted for Channel 257C2 at Monroe, Utah; Channel 250C2 is being substituted for Channel 259C1 at Green River, Wyoming; and Channel 258A is being substituted for Channel 259A at Saratoga, Wyoming.

21. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:

Big Thicket Broadcasting of Wyoming, Inc.
c/o Law Offices of Dan J. Alpert
2120 North 21st Road
Suite 400
Arlington, Virginia 22201

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau