

SECRET FILE COPY ORIGINAL

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

MAILED

JUN 15 2006

FCC Mail Room

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	MB Docket No. 04-361
FM Broadcast Stations.)	RM- 11074
)	
(Portales and Roswell, New Mexico) ¹)	File No. BPH-20040426AAJ

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 7, 2006

Released: June 9, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making*,² issued at the request of Dana J. Puopolo ("Petitioner") proposing the allotment of Channel 289C0 at Roswell, New Mexico, as the community's thirteenth local aural transmission service. Rooney Moon Broadcasting, Inc. ("RMC"), licensee of Station KSEL-FM, Portales, New Mexico, filed comments and a counterproposal requesting grant of its timely filed one-step upgrade application³ proposing to substitute Channel 290C1 in lieu of Channel 237A⁴ at Portales. RMC also proposes to allot Channel 237C0 at Roswell in lieu of Channel 289C0 as proposed by Petitioner, and pledges to file for that channel, if allotted. Petitioner filed comments stating that he would apply for its requested channel, if allotted.

2. In support of its counterproposal, RMC, notes that Station KSEL-FM is Portales' first competitive and only commercial FM station.⁵ Petitioner's proposal for Channel 289C0 at Roswell would block Station KSEL-FM from upgrading its facilities to Class C1 status. The conflict between the two proposals can be resolved by allotting alternate Channel 237C0 at Roswell. RMC states that the allotment of Channel 237C0 at Roswell would provide an additional service to 81,451 persons, which is 7,963 persons more than the 73,588 persons that Channel 289C0 at Roswell would serve. In addition, the upgrade of Station KSEL-FM would allow it to increase its service area from 27,553 persons as a Class A station, to 69,753 persons as a Class C1 station, with no loss area.

3. We agree that RMC's counterproposal will serve the public interest because it will allow both proposals to go forward. Channel 290C1 can be allotted at Portales at RMS's requested site 5.5 kilometers (3.4 miles) east of the community.⁶ Channel 237C0 can be allotted at Roswell at a site 29.1

¹ The community of Portales has been added to the caption.

² *Roswell, New Mexico*, Notice of Proposed Rule Making, 19 FCC Rcd 17806 (MB 2004)

³ See File No. BPH-20040426AAJ.

⁴ RMC notes that use of the one-step procedure is appropriate because Channel 290 is 53 Channels removed from Channel 237, and thus they are intermediate frequency ("IF") channels to one another. *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, Report and Order, 8 FCC Rcd 4735 (1993).

⁵ Noncommercial educational Station KENW-FM is the only other station licensed to Portales.

⁶ The coordinates for Channel 290C1 at Portales are 34-11-34 NL and 103-16-44 WL.

kilometers (18.1 miles) northwest of the community.⁷ Since Roswell is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. The Commission has not received concurrence for the Channel 237C0 allotment at Roswell from the Mexican Government. If a construction permit for Channel 237C0 at Roswell, New Mexico, is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes."

4. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A).

5. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective July 24, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Roswell, New Mexico	235C, 237C0, 246C1, *258A, 263C1, 284C2, 293C1
Portales, New Mexico	290C1

6. A filing window period for Channel 237C0 for Roswell, New Mexico, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

7. IT IS FURTHER ORDERED, That the counterproposal filed by Rooney Moon Broadcasting, Inc., licensee of Station KSEL-FM, Portales, New Mexico, IS GRANTED.

8. IT IS FURTHER ORDERED, That the application for construction permit for a one-step upgrade filed by Rooney Moon Broadcasting, Inc., licensee of Station KSEL-FM, Portales, New Mexico, File No. BPH-20040426AAJ, IS GRANTED.

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

10. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

John M. Pelkey, Esq.
Garvey, Schubert Barer
1000 Potomac Street NW

⁷ The coordinates for Channel 237C0 at Roswell are 33-31-30 NL and 104-47-56 WL.

Washington, D.C. 20007
(Counsel, Rooney Moon Broadcasting, Inc.)

11. For further information concerning a proceeding listed above, contact Victoria McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau