

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

MAILED

AUG 07 2006

FCC Mail Room

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-45
Table of Allotments,)	RM-11147
FM Broadcast Stations.)	RM-11246
(Atwood, Kansas, McCook and)	
Ogallala, Nebraska, Burlington and)	
Flagler, Colorado) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 2, 2006

Released: August 4, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the Notice of Proposed Rule Making and Order to Show Cause² ("Notice") issued in response to a petition for rule making filed by Border Alliance of Broadcasters ("Petitioner") proposing the allotment of Channel 280C0 at Atwood, Kansas, as the community's first local aural transmission service (RM-11147). To accommodate the allotment, Petitioner also proposed the (a) the substitution of Channel 292C2 for vacant Channel 280C2 at McCook, Nebraska, and the modification of the reference coordinates; (b) the substitution of Channel 282C1 for Channel 281C1 at Burlington, Colorado, and the modification of Station KNAB-FM's license accordingly; and (c) the substitution of Channel 261C3 for vacant Channel 283C3 at Flagler, Colorado. A pleading styled "Comments, Counterproposal and Response to Order to Show Cause" was filed by KNAB, Inc. ("KNAB"), licensee of Station KNAB-FM, Channel 281C1, Burlington, Colorado (the "KNAB counterproposal"). KNAB proposed the allotment of Channel 292C0 in lieu of Channel 280C0 at Atwood, Kansas (RM-11246).³ To accommodate the proposal, KNAB also proposed the substitution of Channel 294C1 for Channel 293C1 at Ogallala, Nebraska, and the modification of Station KMCX-FM's license accordingly. An Order to Show Cause was issued directed to Capstar TX Limited Partnership ("Capstar"), licensee of Station KMCX-FM, as to why its frequency should not be changed to accommodate the counterproposal.⁴ Petitioner filed comments in support of the proposal reaffirming its intention to apply for Channel 280C0 at Atwood, if allotted. We will allot Channel 292C0 at Atwood for the reasons stated below.

¹ The community of Ogallala, Nebraska, has been added to the caption.

² *Atwood, Kansas, McCook, Nebraska, Burlington and Flagler, Colorado*, Notice of Proposed Rule Making and Order to Show Cause, 20 FCC Rcd 12250 (MB 2005).

³ The counterproposal was put on Public Notice on May 20, 2005, Report No. 2709 (RM-11246).

⁴ *Atwood, Kansas, McCook and Ogallala, Nebraska, Burlington and Flagler, Colorado*, Order to Show Cause, 20 FCC Rcd 10947 (MB 2005).

2. In support of its proposal, Petitioner states that Atwood is the county seat of Rawlings County and has a 2000 U.S. Census population of 1,279 persons.⁵ Petitioner also states that the community has no local aural services, and that the allotment would satisfy priority (3) of the Commission's FM allotment priorities.⁶

3. Petitioner was requested to provide the public interest benefits in support of the substantial site restriction (20.5 kilometers) required for the substitution of Channel 292C2 for vacant Channel 280C2 at McCook, Nebraska, to accommodate the Atwood allotment. In response to that request, Petitioner asserts the public interest is well-served by allowing site restrictions for stations in many cases. In the case of McCook, Petitioner states that there are already four operating FM services in the community. Two stations have identical sites and coverage in this rural area. KNAB alleges that the proposed site restriction has the benefit of curing that service "redundancy" by creating a McCook allotment that would provide service to the east and south of McCook. KNAB further claims that although a licensee's voluntary acquisition of Channel 292C2 requires construction from a site further from the community center, the public overall will be benefited by receiving a new first local service at Atwood. Moreover, McCook is well-served by allotments with no site restrictions.

4. In response to the *Order to Show Cause*, KNAB filed the KNAB counterproposal. KNAB argues that its proposal would better serve the public interest by providing a "more efficient arrangement of allotments." Specifically, KNAB claims its proposal would potentially provide service to 47,680 persons encompassing an area of 21,852 square kilometers, and there would be no projected loss of service. In contrast, Petitioner's proposal would have a net gain in service of only 45,015 persons, a difference of 2,665 persons. Furthermore, KNAB contends that Petitioner's proposal would result in a substantial site restriction for the McCook, Nebraska allotment, and a net loss of service once the Flagler and McCook allotments commence service. Therefore, KNAB concludes that its proposal would provide all of the public interest benefits of a new first local aural transmission service at Atwood, but it would not suffer the public interest detriments of the loss of predicted population coverage at Flagler and McCook.

5. Pursuant to Section 1.87 of the Commission's Rules, Capstar did not file comments in response to the *Order to Show Cause*, and therefore, will be deemed to have consented to the proposed channel change at Ogallala. KNAB states its willingness to reimburse Capstar, licensee of Station KMCX-FM, for reasonable costs to change from Channel 293C1 to Channel 294C1 at Ogallala, Nebraska.⁷ KNAB affirms its intention to apply for Channel 292C0 at Atwood, if allotted.

6. Generally, conflicting proposals are comparatively considered under the Commission's guidelines set forth in *Revision of FM Assignment Policies and Procedures*. However, because both

⁵ A staff search revealed that Atwood has a local government, banking and financial institutions, schools, library, museum, recreational facilities, retail stores, a real estate company, restaurants, motels, health care services, construction companies, farm supply companies, and an internet service.

⁶ The FM allotment priorities are: 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 given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).

⁷ See *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159 (1967).

parties have proposed a Class C0 allotment at Atwood, Kansas, it is not necessary. Pursuant to the Commission's policy to grant the least restrictive site for new allotments, we will allot Channel 292C0 at Atwood, Kansas, as the community's first local aural transmission service.⁸ To accommodate the allotment, we also substitute Channel 294C1 for Channel 293C1 at Ogallala, Nebraska. An engineering analysis has determined that Channel 292C0 can be allotted to Atwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) southeast to avoid a short-spacing to the licensed site of Station KQNK-FM, Channel 294A, Norton, Kansas. The reference coordinates for Channel 292C0 at Atwood are 39-43-51 North Latitude and 100-53-58 West Longitude. Additionally, Channel 294C1 can be substituted at Ogallala at Station KMCX-FM's currently authorized site. The reference coordinates for Channel 294C1 at Ogallala are 41-09-02 North Latitude and 101-41-42 West Longitude.

7. Accordingly, pursuant to the authority contained in 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 September 18, 2006, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Atwood, Kansas	292C0
Ogallala, Nebraska	259C1, 294C1

8. A filing window for Channel 292C0 at Atwood, Kansas, 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. Because the allotment requires the substitution of Channel 294C1 for Channel 293C1 at Ogallala, Nebraska, any requisite conditions for the channel change will be stipulated in said order.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Capstar TX Limited Partnership for Station KMCX-FM, IS MODIFIED to specify operation on Channel 294C1 at Ogallala, Nebraska, 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 of the Commission's Rules.

(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, unless the proposed facilities are categorically excluded from environmental processing.

10. IT IS FURTHER ORDERED, that the ultimate permittee of Channel 292C0, Atwood,

⁸ See, *Stuart and Boone, Iowa*, Report and Order, 5 FCC Rcd 4537 (MMB 1990), *recon. denied*, Memorandum Opinion and Order, 6 FCC Rcd 6036 (MMB 1991).

Kansas, shall reimburse Capstar TX Limited Partnership, for its reasonable costs of changing the frequency of Station, KMCX-FM, Ogallala, Nebraska, to Channel 294C1 to accommodate the Atwood allotment.

11. IT IS FURTHER ORDERED, that the petition for rule making filed by Border Alliance of Broadcasters proposing the allotment of Channel 280C0 at Atwood, Kansas (RM-11147), IS DENIED.

12. IT IS FURTHER ORDERED, that the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

Capstar TX Limited Partnership
2625 S. Memorial Drive, Suite A
Tulsa, Oklahoma 74129-2623

KNAB, Inc.
17534 Colorado Road
Burlington, Colorado 80807

13. 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).

14. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

15. For further information concerning the above, contact Sharon P. McDonald Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau