

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

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. 01-18 |
| Table of Allotments, |) | RM-10026 |
| FM Broadcast Stations. |) | RM-10098 |
| (Arriba, Bennett, Brush and Pueblo, Colorado; |) | |
| Pine Bluffs, Wyoming) ¹ |) | |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 30, 2002

Released: February 8, 2002

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is the Notice of Proposed Rule Making, 16 FCC Rcd 2289 (2001), issued in response to a petition filed by Alan Olson (“Olson”), proposing the allotment of Channel 297A to Arriba, Colorado, as that community’s first local aural transmission service. Olson filed supporting comments in response to the Notice. BK Radio (“BK”) also filed supporting comments. A joint counterproposal was filed on behalf of KKDD-FM Broadcasters, LLC. (“KSIR”), licensee of Station KSIR-FM, Brush, Colorado, and Metropolitan Radio Group, Inc. (“KNKN”),² licensee of Station KNKN, Pueblo, Colorado,³ (referred to herein as “KSIR/KNKN”, or individually). Olson filed an informal response to the joint counterproposal.⁴ No other comments were received.

2. KSIR/KNKN counterproposed the substitution of Channel 296C for Channel 296C1 at Brush (pop. 4,165),⁵ the reallocation of Channel 296C to Bennett, Colorado (pop. 1,757), as that

¹ The communities of Brush, Bennett and Pueblo, Colorado, as well as Pine Bluffs, Wyoming, have been added to the caption.

² A voluntary assignment of the license for Station KNKN from Guardian Communications, Inc. (“Guardian”) to Metropolitan Radio Group (“Metro”) was granted July 23, 1997 (see File No. BALH-19970609EB), and consummated on August 1, 1997.

³ Public Notice of the counterproposal was given on April 20, 2001 (Report No. 2478).

⁴ While Olson’s reply comments contain a certificate of service, they do not appear in the Commission’s records. Section 1.420(e) of the Commission’s Rules requires that a signed original and four copies of all comments, reply comments and other pleadings shall be filed with the Commission. Pursuant to Section 0.11(10)(b), the Secretary is the official custodian of the Commission’s documents. Therefore, since formal filing of Olson’s reply comments with the Commission cannot be established, they will not be considered herein.

community's first local aural transmission service, and modification of the license for Station KSIR-FM accordingly. Additionally, to accommodate the proposal, KSIR/KNKN proposed the substitution of Channel 295C2 for Channel 296C2 at Pueblo, the relocation of the transmitter for Station KNKN, and modification of the license of Metropolitan Radio Group, Inc., accordingly. The licensee of Station KNKN has agreed to the channel substitution and relocation at Pueblo.⁶

3. In support of the proposal, KSIR/KNKN assert that the proposed use of Channel 296C at Bennett meets the requirements specified by the Commission in order to grant a change of community of license. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990). In this regard, KSIR comments that the proposed use of Channel 296C at Bennett is mutually exclusive with the current use of Channel 296C1 at Brush. The distance between the two communities is 42.1 kilometers (26 miles) whereas a minimum distance of 270 kilometers (168) is required in this instance. Also, KSIR/KNKN advise that Brush would not be left without local service, as the community will continue to receive local service provided by Station KSIR(AM), and Station KPRB(FM), Channel 292A. Additionally, KSIR/KNKN assert that as Bennett will receive a first local service (priority three), whereas Brush currently has three local transmission services (priority four), the proposed arrangement of allotments should be preferred over the existing arrangement pursuant to the Commission's allotment priorities.⁷ See Revision of FM Assignment Policies and Procedures ("Revision"), 90 FCC 2d 88 (1982), recon. denied, 56 RR 2d 448 (1983).

4. KSIR/KNKN also advise that Bennett is not located in an urbanized area and the proposed 70 dBu contour of Station KSIR will not encompass 50% or more of any urbanized area.⁸ Additionally, demographic information is provided to establish that Bennett is a *bona fide* community for allotment purposes that has a need for a first local aural transmission service. According to KSIR/KNKN, Bennett was incorporated in 1930, and has a mayor/city council form of

⁵ Population figures reported herein were taken from the 1990 U.S. Census.

⁶ KSIR/KNKN advise that they each filed contingent applications simultaneously pursuant to Section 73.3517 of the Commission's Rules which, if granted, would enable KSIR to upgrade to a Class C at Brush (see File No. BPH-20010214ACE), and KNKN would change frequencies and relocate its transmitter site at Pueblo (see File No. BPH-20010214ACF). However, KSIR/KNKN emphasize that their counterproposal filed herein is a separate matter and is not dependent on favorable action on the referenced applications.

⁷ 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 given to priorities (2) and (3).) See, Revision, supra.

⁸ KSIR/KNKN report that Station KSIR-FM presently provides 70 dBu coverage to 4.3% of the Greeley, Colorado, Urbanized Area. The proposed reallotment and modification of Station KSIR-FM to Channel 296C at Bennett will result in the provision of 70 dBu coverage to less than 1% of the Denver Urbanized Area.

government. It also has its own post office and zip code (80102), as well as its own police department in conjunction with Adams and Arapahoe Counties. Bennett also has its own fire department, municipal services, churches, schools, library, and newspaper. Additionally, Bennett has its own distinct cultural identity, and offers numerous annual community activities. Bennett provides its residents with its own parks and recreation department, and has approximately 200 local business establishments, a number of which incorporate “Bennett” in their name. Bennett also has local health care professionals and related facilities.

5. As the transmitter site for Station KSIR-FM must be relocated to accommodate the modification request at Bennett, gain and loss areas will be created. In this regard, KSIR/KNKN advise that the proposed reallocation will result in a net gain in population of 1,167,627 persons and a net area gain of 11,292 sq. km. According to KSIR/KNKN, a small gray area of 88 persons in 386 sq. km. will be created, but that the loss is outweighed by the projected provision of a second fulltime aural reception service (gray area) to 166 persons in an area comprising 490 sq. km.⁹ In the event the Commission should be concerned with a loss of a service to 88 persons at Brush, KSIR\KNKN propose the allotment of Channel 238C3 at Pine Bluffs, Wyoming, to encompass the entire referenced gray area.¹⁰ KSIR pledges to apply for the Pine Bluffs channel if allotted and to construct the facility if authorized.

6. To accommodate Channel 296C at Bennett, Channel 295C2 must be substituted for Channel 296C2 at Pueblo, and Station KNKN relocated to a new transmitter site as jointly proposed by KSIR\KNKN. According to KSIR\KNKN the new transmitter site specified for Station KNKN complies with the minimum distance separation and city grade coverage requirements of the Commission’s Rules.

7. KSIR\KNKN assert that in accordance with the Commission’s allotment priorities, the proposed reallocation of Station KSIR-FM to Bennett (pop. 1,757), as that community’s first local aural service, should be preferred over a first local service to the smaller community of Arriba (pop. 220), citing Three Oaks and Bridgman, Michigan, 5 FCC Rcd 1004 (1990); Pitkin, Louisiana, et al., 15 FCC Rcd 17311 (2000). However, KSIR/KNKN offers that numerous other Class A channels are available for allotment to Arriba, including Channels 240 or 300, to accommodate the expressions of interest in providing local FM radio service at that community.

8. Conflicting proposals, such as those filed in this proceeding, are generally considered

⁹ KSIR reports that the gray area loss analysis is based on actual facilities. If KSIR-FM were considered a maximum Class C1 facility, then it advises that the potential loss of service would occur to 106 persons in an area of 473 sq. km. In any event, KSIR reiterates that the provision of a second fulltime aural reception service from Channel 296C at Bennett counterbalances the small loss of such service at Brush.

¹⁰ KSIR advises that although Pine Bluff presently has an allotment, it does not cover the gray area that would be created by the removal of its Brush facility.

under the guidelines set forth in Revision supra. However, in this instance, we have confirmed that an alternate, equivalent channel is available for allotment at Arriba,¹¹ and therefore, there is no need to compare that community with Bennett, Colorado.

9. KSIR's proposal is filed pursuant to Section 1.420(i) of the Commission's Rules. See Community of License, supra. Pursuant to the stated policy, we must determine whether the petitioner's proposal would result in a preferential arrangement of allotments. See Revision, supra. The reallocation proposal would enable Station KSIR to provide Bennett, Colorado, an incorporated community that is not associated with an urbanized area, with its first local aural transmission service (priority three), and would not leave Brush devoid of local service (priority four). Additionally, as stated above, the proposed allotment of Channel 296C to Bennett is mutually exclusive with its existing authorization at Brush.

10. A staff engineering analysis differs from KSIR/KNKN's gain and loss projections. The fundamental difference in coverage projections is attributable to the methodologies used. Rather than use the standard propagation methodology at the allotment stage, which assumes omnidirectional signals and uniform terrain for all existing FM services that would overlap any portion of the gain/loss areas, KSIR/KNKN's analysis used an alternate propagation methodology, taking terrain factors into account. Therefore KSIR/KNKN's reception service analysis depicting that a small section of second aural reception service area appears in the gain area, is incorrect. When the F(50,50) coverage predictions specified in Section 73.313 of the Commission's Rules is employed, no second aural reception service appears in the gain area of requested Channel 296C at Bennett. According to our findings, the loss area of Channel 296C1 at Brush, Colorado contains 14,800 people and covers 2,613 sq. km. Conversely, the gain area of Channel 296C at Bennett, Colorado, contains 915,384 people and covers 12,592 square kilometers. Therefore, the reallocation would produce a net gain of 900,584 people and cover 9,979 sq. km. In the loss area of Channel 296C1 at Brush, a few small sections will be left with less than five fulltime services if Station KSIR is reallocated to Bennett, as follows: the area receiving four fulltime services contains 25 people and covers 198 sq. km.; the area receiving three fulltime services contains 36 people in an area of 200 sq. km.; the area receiving two fulltime services contains 24 people and covers 320 sq. km.; the area receiving only one fulltime service (gray area) contains 40 people and covers 150 sq. km. No white area will be created. The gain area of Channel 296C at Bennett contains a few sections that are presently underserved, as follows: an area receiving four fulltime services contains 2,580 people and covers 732 sq. km.; an area receiving three fulltime services contains 2,893 people and covers 2,829 sq. km.; an area receiving two fulltime services contains 895 people and covers 2,542 sq. km. No white or gray area would be served in the gain area. In order to negate the creation of a gray area at Brush, we will allot Channel 238C3 to Pine Bluffs, Wyoming, to provide reception service to the

¹¹ The Commission considers channels to be equivalent provided they are of the same class distinction, would comply with the minimum distance spacing criteria, and would enable a broadcast facility to provide 70 dBu coverage to the proposed allotment community. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).

specified loss area. Channel 238C3 can be allotted to Pine Bluffs consistent with the technical requirements of the Commission's Rules.

11. In view of the interest expressed in providing a first local aural transmission service at Arriba, we will allot Channel 240A to that community. Additionally, we are substituting Channel 296C for Channel 296C1 at Brush, reallocating Channel 296C to Bennett, Colorado, and modifying the license for Station KSIR-FM to specify operation on Channel 296C at Bennett. This will result in a preferential arrangement of allotments, as required by Section 1.420(i) of the Commission's Rules and Community of License, *supra*. Bennett will receive its first local service (priority three), and Brush will continue to receive local service (priority four). The reallocation will also result in a net service gain to 900,584 people in an area of 9,979 square kilometers. Also, in order to accommodate Channel 296C at Bennett, we are substituting Channel 295C2 for Channel 296C2 at Pueblo, Colorado, at a new transmitter site, and modifying the license of Station KNKN to specify operation on Channel 295C2 as requested. In addition, we are allotting Channel 238C3 to Pine Bluffs, Wyoming, as requested by KSIR\KNKN.

12. Channel 240A can be allotted to Arriba consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction at coordinates 39-17-12 NL and 103-16-30 WL. Channel 296C can be allotted to Bennett, Colorado, at the requested site for Station KSIR-FM, located 42.8 kilometers (26.6 miles) northeast of the community at coordinates 39-54-34 NL and 103-57-58 WL. Channel 295C2 can be allotted to Pueblo, Colorado, at the requested site for Station KNKN, located 17.8 kilometers (11.1 miles) southeast of the community at coordinates 38-06-32 NL and 104-29-18 WL. Channel 238C3 can be allotted to Pine Bluffs, Wyoming at a restricted site located 19.6 kilometers (12.2 miles) south of the community at coordinates 41-00-23 NL and 104-00-34 WL.

13. In light of the above, the Audio Services Division of the Mass Media Bureau may resume processing of the pending applications of KSIR and KNKN at Brush and Pueblo, Colorado (BPH-20010214ACE and BPH-20010214ACF) respectively, upon finality of this Report and Order.

14. 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 March 25, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the

communities listed below, as follows:

| <u>City</u> | <u>Channel No.</u> |
|----------------------|---|
| Arriba, Colorado | 240A |
| Brush, Colorado | 292A |
| Bennett, Colorado | 296C |
| Pueblo, Colorado | 245C, 255C, 260C, 264C, 295C2, 300C1 |
| Pine Bluffs, Wyoming | 238C3, 287C2 |

15. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that (1) the authorization of KKDD-FM Broadcasters, L.L.C. for Station KSIR-FM, Channel 296C1, IS MODIFIED to specify operation on Channel 296C at Bennett, Colorado, in lieu of Brush, Colorado; and (2) the authorization of Metropolitan Radio Group, Inc. for Station KNKN(FM), Pueblo, Colorado, IS MODIFIED to specify operation on Channel 295C2 in lieu of Channel 296C2, 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.

16. IT IS FURTHER ORDERED, That the Commission's Office of Public Affair, Reference Operations Division, shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

KKDD-FM Broadcasters
P.O. Box 2224
Greeley, CO 80632

Metropolitan Radio Group, Inc.
3801 Skillern Blvd.
Flower Mound, TX 75208

17. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change in community of license of a television or FM 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, KKDD-FM Broadcasters, LLC., licensee of Station KSIR-FM, 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 upgrade at Bennett, Colorado.

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

19. Filing windows for Channel 240A at Arriba, Colorado, and Channel 238C3 at Pine Bluffs, Wyoming, will not be opened at this time. Instead, the issue of opening the allotments for auction will be addressed by the Commission in a subsequent Order.

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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