

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

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
(Grants and Bosque Farms, New Mexico)
MM Docket No. 01-78
RM-10080

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 28, 2003

Released: May 30, 2003

By the Assistant Chief, Audio Division:

1. At the request of Educational Media Foundation ("Petitioner"), licensee of noncommercial educational Station KQLV(FM), Channel 288C1, Grants, New Mexico, the Audio Division has before it the Notice of Proposed Rule Making, proposing the downgrade of Channel 288C1 to Channel 288C2 at Grants, the reallocation of Channel 288C2 from Grants to Bosque Farms, New Mexico, and the modification of Station KQLV(FM)'s license accordingly. Petitioner also requested the allotment of Channel 244C3 to Grants, New Mexico. Petitioner filed comments in support of the proposals reaffirming its intention to apply Channel 288C2 at Bosque Farms and Channel 244C3 at Grants, if allotted. Christian Country Network, Inc. ("CCN") filed a counterproposal proposing the substitution of Channel 244C3 for Channel 288C at Grants, New Mexico, and the allotment of Channel 288C2 at Bosque Farms, New Mexico. CCN stated its intention to apply for Channel 288C2 at Bosque Farms, if allotted. After the record closed, the parties filed a Joint Request for Approval of Settlement Agreement. On May 9, 2003, CCN filed a "Notice of Voluntary Withdrawal of Comments."

2. The proposed reallocation was filed pursuant to Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. In evaluating a proposal, we

1 Grants and Bosque Farm, New Mexico, 16 FCC Rcd 739 (2001).

2 The Notice proposed the substitution of Channel 288C2 for Channel 288C at Grants and the reallocation of Channel 288C2 to Bosque Farms, New Mexico. On April 25, 2001, petitioner was granted a minor modification of Station WQLV(FM)'s construction permit to operate at Grants as a Class C1 facility. Petitioner constructed the facility and on May 8, 2001, filed an application for license to cover (File No. BLED-20010508AAW), which was granted on November 15, 2001. Accordingly, we are considering this proposal as a request to downgrade the allotment from Channel 288C1 to Channel 288C2.

3 See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New

compare they existing versus the proposed arrangement of allotments using the FM allotment priorities.⁴ In support of its proposal, petitioner states that the first three FM allotment priorities are not involved as both Grants and Bosque Farms have at least one local transmission service. However, petitioner further states that the public interest supports the grant of its request since the reallocation of Channel 288C2 at Bosque Farms and the allotment Channel 244C3 at Grants will further the Commission's allotment priorities and result in a preferential arrangement of allotments because it would provide Bosque Farms (population 3,931)⁵ with its first local competitive aural service, without depriving Grants (population 8,806) of its sole local aural service. One full-time AM and two FM services would remain licensed to Grants and an additional FM service is proposed herein. Moreover, the reallocation of Channel 288C2 to Bosque Farms would allow KQLV(FM) to greatly increase the number of people who would receive a new aural service.

3. In making this analysis, we find that both Grants and Bosque Farm have at least one local transmission service, so our decision will be based on priority (4)--other public interest matters. An engineering study reveals that the reallocation of Channel 288C2 at Bosque Farms would result in a net gain of service to a population of 599,965 persons. The gain area has five or more reception services and is considered to be well-served. We find this population gain coupled with a first competitive service for Bosque Farms results in a preferential arrangement of allotments. We recognize that the reallocation would also result in a loss area of 7,865 square kilometers encompassing a population of 5,538 persons--7 persons within an area of 1,922 square kilometers with no service; an unpopulated area of 498 square kilometers with one service; 527 persons within an area of 1,886 square kilometers with two services; 215 persons within an area of 1,537 square kilometers with three services; and 4,789 persons within an area of 1,086 kilometers with four services. Even though we are reallocating Channel 288C2 to Bosque Farms without consideration of the potential service gains from the allotment of Channel 244C3 to Grants, we do note that this allotment will eventually cover a significant portion of the loss area.

4. Moreover, the parties filed a Settlement Agreement in which CCN agrees to dismiss its proposal in exchange for reimbursement for legitimate and prudent expenses incurred in the preparation and prosecution of its proposal, an amount not to exceed \$2,000.⁶ CCN also submitted an itemization of the costs incurred. The Settlement Agreement is accepted, and we will dismiss CCN's counterproposal, as requested.

Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community*").

⁴ The Commission's 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 given to priorities (2) and (3)). See *Revision of FM Allotment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁵ All population figures are taken from the 2000 U.S. Census.

⁶ In compliance with Section 1.420(j), both petitioner and CCN submitted declarations stating that neither party, nor any of its principals, has been promised or paid any other consideration in connection with the Settlement Agreement.

5. We believe the public interest would be served by reallocating Channel 288C2 to Bosque Farms, New Mexico, since it would allow Station KQLV(FM) to expand its service, without depriving Grants of its sole local service. Additionally, Channel 244C3 can be allotted to Grants, New Mexico. An engineering analysis has determined that Channel 288C2 can be reallocated to Bosque Farms in accordance with the Commission’s minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) southwest to accommodate petitioner’s requested site.⁷ Additionally, Channel 244C3 can be allotted to Grants without the imposition of a site restriction.⁸ In accordance with Section 1.420(i) of the Commission’s Rules, we modify Station KQLV(FM)’s license to specify operation on Channel 288C2 at Bosque Farms, New Mexico, as its new community of license.

6. The Commission recently directed the Media Bureau to cease from the practice of allotting new “backfill” FM allotments to “preserve” a community’s sole local transmission service. The Commission stated that the ultimate licensing of a backfill” through its auction procedures is both an uncertain and time-consuming process, especially during the current hiatus in broadcast auctions. Further, the Commission was extremely concerned that the “backfill” process could lead to intractable spectrum entanglements.⁹ However, the instant proposal to reallocate Channel 288C2 at Bosque Farms is distinguishable because three stations are currently licensed to the community and that our action reallocating Channel 288C2 to Bosque Farms is not predicated on allotting Channel 244C3 to Grants.

7. Accordingly, pursuant to the authority found 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 14, 2003, 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>
Bosque Farms, New Mexico	284C1, 288C2
Grants, New Mexico	224A, 279C, 244C3

8. A filing window for Channel 244C3 at Grants, 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 The coordinates for Channel 288C2 at Bosque Farms are 34-47-55 North Latitude and 106-48-59 West Longitude.

⁸ The coordinates for Channel 244C3 at Grants are 35-09-08 North Latitude and 107-50-33 West Longitude.

⁹ See *Refugio, Texas*, 18 FCC Rcd 2291 (2003), *recon. pending*.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Educational Media Foundation for Station KQLV(FM), Channel 288C1, Grants, New Mexico, IS MODIFIED to specify operation on Channel 288C2 at Bosque Farms, New Mexico, 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.
- (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.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of 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, Educational Media Foundation, licensee of Station KQLV(FM), is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

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

Educational Media Foundation
1425 North Market Boulevard, Suite 9
Sacramento, California 95834
(Licensee of Station KQLV(FM))

George Smith
Christian Country Network, Inc.
P.O. Box 111
Klamath Falls, Oregon 97601

12. IT IS FURTHER ORDERED, That, as requested, the counterproposal filed on April 4, 2001 by Christian Country Network, Inc., IS DISMISSED.

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

14. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau