

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-155
Table of Allotments,)	RM-9924
FM Broadcast Stations.)	
(Las Vegas and Rowe, New Mexico))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 16, 2000

Released: August 25, 2000

Comment Date: October 16, 2000

Reply Comment Date: October 31, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Meadows Media, LLC ("petitioner"), permittee of Station KTRL, Channel 275C2, Las Vegas, New Mexico, requesting the substitution of Channel 275C3 for Channel 275C2, the reallocation of the channel from Las Vegas to Rowe, New Mexico, as the community's first local aural service, and the modification of Station KTRL's construction permit to specify Rowe as its community of license. Petitioner states that it will apply for Channel 275C3, if allotted to Rowe.

2. Petitioner states that the reallocation of Channel 275, as a Class C3, would result in a preferential arrangement of allotments as it would provide a first local aural service to Rowe while Las Vegas would continue to receive local aural service from five operating aural stations (FM Stations KBAC, KLVF, KEDP, AM Stations KFUN, KNMX).¹ In addition, it states that Las Vegas will shortly receive two additional local services because construction permits have been granted for Station KMDZ, Channel 244A, and BK Radio on Channel 268A.²

3. Petitioner states that the Rand McNally Commercial Atlas and Marketing Guide, 131st edition, attributes Rowe with a population of 250 people, which it believes to be an underestimation. It states that, according to the postmistress, 220 post office boxes are rented in Rowe, and based on an average of two and a half persons per household, both she and the petitioner believe that the post office serves from 500 to 600 people. However, even if the Commission accepts the lesser population figure,

¹ See, Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

² The construction permit of BK Radio was recently modified to specify Channel 268C3 and Pecos, NM, as its community of license. See, Report and Order, MM Docket 00-5, DA 00-1560, released July 14, 2000.

it points out that the Commission has found that places with even smaller populations are communities for allotment purposes, citing Arnoldsburg, West Virginia, 15 FCC Rcd 9210 (2000).³ To support a finding that Rowe is a community for allotment purposes, petitioner says that Rowe, located in San Miguel County, has its own post office and zip code, and is home to the Native American Preparatory School, a residential high school with some 100 students and staff, where, during the summer months, Middlebury College, Middlebury, Vermont, offers advanced courses in English literature. In addition, it states that this mostly Roman Catholic community is served by the Sagrada Familia Rowe Holy Catholic Church. The community, we are told, has numerous commercial establishments such as Rowe Mesa Homes, Rowe Mesa Telecommunications Site, Adelante Plumbing and Heating, Sante Fe Firewood, Johnny's Towing, Tom's Upholstery Shop, Johnny's Tire Repair, Amazing Gates of Santa Fe, and a large commercial greenhouse. It also points out that Rowe is the headquarters of District 4 - New Mexico Highway and Transportation Department Maintenance Patrol, with more than twenty employees, and the headquarters of the Forked Lightning Ranch, which also contains the Rowe Cemetery, is located adjacent to the community. According to the petitioner, Rowe was founded in 1876 as a rail center along the main line of the Santa Fe Railroad and the Rowe depot continues to function as an important rail maintenance center.

4. Petitioner submits that the reallocation of Channel 275C3 to Rowe will not result in the removal of a service from a rural area to serve an urban area. It states that Rowe is not located within an urbanized area and the station will not provide a 70 dBu signal to 50% or more of any such area. Petitioner says that Rowe is located approximately 25 road miles from Santa Fe and extensive mountainous areas separate the two. Further, since Station KTRL has not yet begun operation, the removal of Channel 275C2 from Las Vegas will not result in a loss of service which the public has come to rely upon, citing Long Beach and Shallotte, North Carolina, 14 FCC Rcd 3832 (1999), Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997); Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 1995, and Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995). As a Rowe station, petitioner states that the station will provide service to 97,398 people, which represents an increase of 77,199 people from that possible as a Las Vegas station.

5. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "among the several states and communities." The Commission has defined a community as a geographically identifiable population group. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a community for allotment purposes. See, Pleasant Dale, Nebraska, 14 FCC Rcd 18893 (1999), Avon, North Carolina, 14 FCC Rcd 3939 (1999), and Thermal, California, 15 FCC Rcd 2100 (2000). In the past, we have found that a place does not constitute a community for allotment purposes where it lacks

³ The Report and Order stated that Arnoldsburg, with a population of 150 people, has an elementary school and 16 businesses, with the school and many of these businesses identifying themselves with Arnoldsburg by name, as well as a community oriented organization, the "Arnoldsburg School Improvement Council," and a community center, which hosts events such as the "Health Fair" and "Molassas Festival."

the customary factors associated with determining community status, such as a local government, library, schools, shopping centers, churches, a newspaper and social or civic organizations.

6. Based on the information provided by the petitioner, we are unable to definitively find that Rowe is a community for allotment purposes. Rowe is not incorporated or listed in the U.S. Census. It does have a post office, with no residential delivery service, and a zip code. We also attribute it with a population of 250 people, as stated in the 1998 Rand McNally Commercial Atlas and that it has some commercial businesses.^{4,5} Petitioner states that Rowe is home to the Sagrada Familia Rowe Holy Catholic Church but it provided no address to indicate that it is located within Rowe and designed to meet the needs of the community's residents as opposed to serving a wider rural area.⁶ Further, we have been unable to determine that Rowe has a local school, library, shopping center, fire department, or any social or civic organizations. Therefore, petitioner is requested to provide further information to show that Rowe is a community for allotment purposes.

7. Channel 275C3 can be allotted to Rowe in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.8 kilometers (14.2 miles) northeast to avoid a short-spacing to Station KIOT, Channel 273C, Los Lunas, New Mexico, Station KAZX, Channel 275C, Kirtland, New Mexico, and Station KTBL, Channel 277C, Albuquerque, New Mexico.⁷ A staff engineering study has also confirmed that Rowe is not located within an Urbanized Area and the allotment, as proposed, will not provide a 70 dBu signal to 50% or more of the Santa Fe or any other Urbanized Area. Therefore, petitioner need not provide a Tuck showing demonstrating the independence of Rowe. See, Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990). Petitioner did not provide a study showing the areas and populations which would gain and lose service if Channel 275C3 is reallocated to Rowe, as well as the reception services presently available within these areas. We recognize that Station KTRL is not yet built and that the loss of a potential service does not raise the same level of concern as that of an existing service. However, a staff engineering study shows that the allotment of Channel 275C3 to Rowe will result in a loss of potential service by 3,843 people within a 5,040 square kilometer area. Within this area, 974 people, within a 1,591 square mile area, will remain underserved with only one aural service. The staff engineering study also

⁴ While there may be 220 post office boxes rented at the Rowe post office, there is no indication that they are all rented by Rowe residents and businesses. Rather, it appears that the post office serves not just those people and businesses located within Rowe but those in outlying areas. Therefore, we will not accept the enlarged population figure suggested by the petitioner.

⁵ Petitioner states that "[w]ith so many services available by Interstate just 25 minutes away in Santa Fe or Las Vegas (only ten minutes away in Pecos), Rowe has had little need to develop much in the way of retail establishments, yet it is the hub for over 500 people. . ." Petition for rule making, Exhibit 1, page 2.

⁶ The church is not listed in the February 2000 CenturyTel telephone book, provided by the petitioner, which contains the commercial and residential listings for Rowe, Pecos, Glorieta and Terrero.

⁷ The coordinates for Channel 275C3 are 35-40-15 North Latitude and 105-33-06 West Longitude.

shows that the reallocation will result in a net gain of 50,102 people, within an area of 1,286 square kilometers, all of whom presently receive at least two or more services. Therefore, we also request that the petitioner provide further information to demonstrate that the provision of a first local aural service to Rowe will result in a preferential arrangement of allotments. See, Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997), recon. granted on other grounds, 15 FCC Rcd 5532 (2000) (change of community denied because unbuilt station would serve a larger underserved population than would receive a first local aural service). In conformance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 275C3 at Rowe.

8. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Las Vegas, New Mexico	244A, 251C, 264C3, 275C2		224A, ⁸ 244C, 251C, 264C3
Rowe, New Mexico	--		275C3

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before October 16, 2000, and reply comments on or before October 31, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Barry D. Wood
 Paul H. Brown
 Wood, Maines & Brown, Chartered
 1827 Jefferson Place, NW
 Washington, D.C. 20036
 (Counsel to petitioner)

⁸ Channel 224A has been proposed for allotment to Las Vegas pursuant to the request of Sangre de Cristo Broadcasting. See, MM Docket 00-85, 15 FCC Rcd 8964 (2000).

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to 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 PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.