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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-120
Table of Allotments,	)	RM-9902
FM Broadcast Stations.	)	
(Meeker and Craig, Colorado)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 22, 2000 Released: December 1, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making ("Notice"), 15 FCC Rcd 11733 (2000), issued in response to a request filed on behalf of Western Slope Communications, L.L.C. ("petitioner"), permittee of Station KAYW, Channel 251C, Meeker, Colorado, proposing the reallotment of Channel 251C to Craig, Colorado, as that community's third local FM transmission service, and modification of its authorization accordingly. Petitioner filed supporting and supplemental comments in response to the Notice. No other comments were filed. For the reasons discussed below, we deny the proposed reallotment.

2. This proposal is filed pursuant to Section 1.420(i) of the Commission's Rules. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Pursuant to Change of Community, we must determine whether the petitioner's proposal would result in a preferential arrangement of allotments. See Revision of FM Assignment Policies and Procedures, ("FM Allotment Priorities"), 90 FCC 2d 88 (1982).[1]

3. As stated in the Notice, petitioner advised that the reallotment of Channel 251C to Craig (pop. 8,901),[2] would enable it to provide primary service to a population of 20,245 persons in an area of 25,609 square kilometers, including a first fulltime service to 514 persons in an area of 2,999 square kilometers and a second fulltime service to 30 persons within an area of 272 square kilometers, triggering FM allotment priorities one and two, as well as providing additional service to underserved areas.[3] In comparison, petitioner claimed that while the retention of Channel 251C at Meeker (pop. 2,098), would provide primary service to 25,541 people in an area of 18,264 square kilometers, no

[1] The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (2) first local service; and (4) other public interest maters. [Co-equal weight is given to priorities (2) and (3).]

[2] Population figures cited herein were taken from the 1990 U.S. Census.

[3] Id. at ¶ 3.

white or gray areas would be created within the loss area at Meeker,[4] and a majority of the population within the projected loss area will continue to receive at least five fulltime aural services.[5]

4. Our engineering analysis, as set forth in the Notice, differed significantly from the petitioner's projections.[6] We found that while the reallotment of Channel 251C would result in a gain area at Craig containing 4,141 people in an area of 11,365 square kilometers, it would result in a net theoretical loss area at Meeker containing a population of 12,233 people in an area of 3,453 square kilometers. The net gain in area served at Craig would comprise 7,912 square kilometers. Our analysis also acknowledged that although there are some sections of white or gray area in the projected gain area at Craig, we found that the estimated white area covers 189 square kilometers but that it is devoid of any population, while the gray area contains 802 people in an area of 2,568 square kilometers.[7] 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 for all FM services that overlap any portion of the gain/loss areas, petitioner's analysis used an alternate propagation methodology taking terrain effects into account, which is different from the Commission's F(50,50) coverage predictions specified in Section 73.313 of the Commission's Rules. Also, the petitioner's engineering analysis did not consider vacant allotments as a service in the gain and loss areas, and it excluded operating stations which would overlap any portion thereof as well. As a result, petitioner's analysis did not include in its consideration five Class C stations, 2 Class C1 stations, 1 Class C2 station and 1 Class C3 station, as well as 3 vacant allotments.[8] Consideration of those additional services dilutes the petitioner's white and gray area showings considerably. As a result of our findings, petitioner was requested to submit additional engineering data to support its claim of service to unserved areas of Craig, plotting service contours as omnidirectional signals.

5. In response, petitioner alleges that while the Commission generally relies of average terrain calculations at the allotment stage, it has employed exceptions to permit the use of an alternate propagation methodology where site availability is certain or severe terrain or other factors limit site availability to a sole location, citing Creswell, Oregon, 4 FCC Rcd 7040 (1989); Woodstock and Broadway, Virginia, 3 FCC Rcd 66348 (1988); Indian Springs, Nevada, Mountain Pass, California, Kingman, Ariziona and St. George, Utah, 14 FCC Rcd 10568 (1999). Petitioner insists that its study, taking into consideration the effects of terrain in the Craig and Meeker areas, significantly affects 70

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[4] For FM allotment purposes, a white area is a geographical area that is not served by any fulltime aural service, and a gray area is served by one fulltime aural service.

[5] Id.

[6] Id. at ¶ 5.

[7] Id.

[8] Id.

dBu signal coverage of Meeker, as well as limiting site suitability, and affects coverage by most of the other regional facilities. Petitioner claims that, like Meeker, the terrain surrounding Craig affects signal coverage. When terrain is considered, petitioner asserts that it reflects "real world coverage" and invalidates the Commission's determination of existing and vacant allotments that reduce the white and gray areas in the gain area previously identified. In support of its assertion, petitioner advises that the terrain surrounding Craig causes the signals of the stations and allotments enumerated by the Commission in the gain area to be attenuated significantly to the extent it prevents their reception at that community, citing Creswell, Oregon, supra. Based upon the use of an alternate propagation methodology petitioner insists that from its proposed transmitter site at coordinates 40-20-35 NL and 108-04-56 WL, and at an elevation of 7,803 feet, Station KAYW will provide a first fulltime aural reception service to 91 persons in an area of 1928.9 sq. km.; a second fulltime reception service to 505 persons in an area of 1799.7 sq. km.; a third such service to 796 persons in an area of 1,947.6 sq. km.; a fourth fulltime aural reception service to 1,389 persons in an area of 1747.7 sq. km.; and a fifth such service to 133 persons in an area of 503.1 sq. km. Therefore, petitioner contends that use of the alternate propagation methodology will result in a net service benefit as its proposal would fulfill allotment priorities (1) and (2) at Craig and provide service to underserved areas.

6. Moreover, petitioner urges that the requested removal of Channel 251C at Meeker is mitigated by the fact that Station KAYW is not constructed and therefore, no service is being provided on which the public has come to rely. Additionally, petitioner asserts that a potential loss at Meeker is lessened by the availability of other allocated, but vacant, channels as well as the availability of other channels that can be allotted to that community. Petitioner avers its proposal would not create any white or gray areas at Meeker but would provide a first and second fulltime aural service at Craig (considering terrain factors). Or, if considering omnidirectional signal coverage, its proposal would provide a second fulltime aural service to 802 people, and would provide overall coverage to more people in the gain area that are underserved than those in the loss area at Meeker. Therefore, petitioner urges that the proposed reallotment of Channel 251C from Meeker to Craig, Colorado, is in the public interest.

Discussion

7. Although the petitioner has cited several cases in which terrain factors were considered by the Commission, they did not involve a change of community of license proceeding to determine population coverage areas. Section 73.313 of the Commission's Rules requires that all predictions or determination of coverage use the Commission's standard propagation methodology, the F(50,50) curves, which assumes uniform or "average terrain." [9] At the allotment stage, the ultimate location

[9] The Commission's model predicts the field strength at distances from the transmitter according to the F(50,50) propagation curves set forth in § 73.333. These curves specify the estimated median field strengths expected to occur 50% of the time at 50% of the receive locations over a rolling or "average" terrain. The F(50,50) curves are based on empirical data and are applied whatever the actual terrain or other conditions. An alternate propagation methodology on the other hand, estimates field strength while taking into account specific transmission paths and terrain features, and other factors, such as the atmospheric refractivity near the earth's surface and characteristics of antenna directivity. Where this standard is met and the use of such methodology is found to be appropriate, for

of the transmitter site is generally unknown, and therefore we do not know the specific terrain along any given signal path. Therefore, we assume uniform terrain in determining coverage and to predict the distance from a theoretical reference site to the 1.0 mV/m service contour given the effective radiated power ("ERP") and the nominal or reference antenna height above average terrain ("HAAT") for the class of station. This yields a coverage area that is perfectly circular. Petitioner's use of contours inappropriately takes into account terrain differences that restrict the predicted 1.0 mV/m signal coverage to less than perfectly circular coverage. Moreover, petitioner's 1 mV/m signal coverage predictions are based upon the use of maximum facilities for all other existing stations or allocations which overlap any portion of the gain and loss area of Station KAYW.

8. Petitioner's population estimates within the gain area at Craig also take terrain variations into account from the theoretical Craig reference point, which, at this juncture, is not an actual site location. The propagation showings continue to exclude the signals of the stations and allotments enumerated in the Notice that we determined would provide coverage within the gain area. As previously found, consideration of those additional services reduces significantly the claimed primary service to white and gray areas at Craig. Therefore, the petitioner's coverage predictions are inappropriate.

9. Our staff engineering analysis employed a prediction methodology at Craig in accordance with § 73.313 of the Commission's Rules. This involved utilizing an omnidirectional signal pattern and assumed actual facilities for all existing Class C stations, as well as any noncommercial educational stations, to determine coverage predictions. For vacant Class C channels, minimum facilities of 100 kW and 300 meters HAAT are assumed.[10] For all other classes of stations in the gain area we have considered maximum facilities for the station class.[11] Additionally, an update to the Map Info. Version 4.0 containing 1990 U.S. Census data, results in slightly different gain and loss projections from the staff engineering analysis given in the Notice. We find that the loss area at Meeker contains 16,246 people and covers 3,451 square kilometers, while the gain area for Channel 251C at Craig contains 4,141 people in an area of 11,375 square kilometers. This would result in a potential net loss of population served of 12,105 people at Meeker, and a net gain of area served of 7,924 square

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the showing to be at all useful, the procedures used in preparing the study must be described as well as the assumptions made and the methodology used. Sample calculations should be provided. Even if the petitioner had established a basis for use of an alternate propagation methodology, it would not be suitable in predicting coverage for population estimates. At the allotment stage, we consider an alternate propagation methodology to predict the distance to field strength contours where the terrain departs significantly from the average terrain and essentially limits site availability to a single location. See Creswell, Oregon, supra; see also Woodstock and Broadway, Virginia, supra. Although petitioner advises that Meeker and Craig are located in mountainous areas, there has been no showing concerning terrain or site availability. Therefore, petitioner has made no justifiable showing to warrant the use of other than the Commission's standard propagation methodology in predicting the extent of service or coverage in this proceeding.

[10] See Indian Springs, Nevada, Mountain Pass, California, Kingman, Arizona, and St. George, Utah, 14 FCC Rcd 10568 (1999), citing Greenup, Kentucky, 4 FCC Rcd 3843 (1989).

[11] See Greenup, Kentucky, 4 FCC Rcd 3843 (1989).

kilometers at Craig. Our engineering determination in all other respects is consistent with our findings in the Notice. The reallotment would not result in the creation of any white or gray areas in the loss area at Meeker. Although the proposal would provide white area coverage within the gain section to an area of 189 square kilometers at Craig, that area is devoid of any population. Also, within the gain section at Craig, the gray area contains 802 people encompassing an area of 2,568 square kilometers.

10. Channel 251C at Meeker is unbuilt and therefore no service is being provided by Station KAYW on which the public relies. Although petitioner urges that the potential loss of Channel 251C at Meeker is lessened by the availability of other allocated but vacant channels, as well as the availability of other channels that area available to that community, no interest was expressed in allotting and applying for a replacement channel at Meeker, and it is not possible to determine when, and if, vacant allotments in that area will eventually provide service. We must determine whether the reallotment proposal would result in a preferential arrangement of allotments. See Change of Community and Revision of FM Assignment Policies and Procedures, supra. Although the Commission has not consistently expressed the same concerns regarding loss areas where the station has not been constructed, each proposal must be viewed in light of our policies and precedent to determine whether the reallotment request would result in a preferential arrangement of allotments. See Change of Community MO&O, supra. See also, Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997).

11. In this case, we find that the requested reallotment of Channel 251C from Meeker to Craig, Colorado, and modification of Station KAYW's authorization would not serve the public interest. In making this determination, based on our engineering studies, we find that this proposal would provide a second fulltime aural reception service to 802 people (priority two), as well as a fourth local transmission service at Craig (priority four). Conversely, retention of Channel 251C at Meeker would result in the provision of a first local transmission service at that community (priority three), if the station were built there. As priorities (2) and (3) are co-equal, the tie breaking mechanism is population.[12] As the number of people (809) that could receive a second fulltime aural reception service at Craig is smaller than the population of Meeker (2,098), the existing arrangment of allotments triggers a more favorable allotment priority than the proposed arrangement of allotments and therefore the public interest is better served by retaining Channel 251C at Meeker.

12. Accordingly, IT IS ORDERED, That the petition for rule making filed on behalf of Western Slope Communications, L.L.C. (RM-9902) IS DENIED.

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

14. For further information concerning the above, contact Jeffrey Sutherland (engineering issues) or Nancy Joyner, Mass Media Bureau, (202) 418-2180.

[12] See Bowden, Griffin, Hogansville and Sparta, Georgia, 6 FCC Rcd 4863 (1991).

FEDERAL COMMUNICATIONS COMMISSION

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