

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 98-159
Table of Allotments,) RM-9290
FM Broadcast Stations.)
(Wallace, Idaho and Bigfork, Montana)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: May 2, 2001

Released: May 11, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rulemaking*, 13 FCC Rcd 16,278 (1998) (“*Notice*”), issued at the request of Alpine Broadcasting Limited Partnership (“Alpine”) as holder of a construction permit for Station KSIL(FM) (File No. BPH-960916MD), Channel 264C (100.7 MHz), Wallace, Idaho. Alpine proposes amendment of the FM Table of Allotments by changing its community of license from Wallace to Bigfork, Montana as that community’s first local aural service. Alpine also proposed that Station KSIL(FM)’s permit be modified to specify Bigfork as its new community of license.

2. Alpine filed comments in response to the *Notice*, reiterating its intention to apply for modification of its construction permit for a new station on Channel 264C at Bigfork, if allotted, and to promptly construct a station there. Opposing comments including a counterproposal were filed by Bee Broadcasting, Inc. (“Bee”), licensee of Montana Stations KDBR(FM) and KBBZ(FM), both of Kalispell, Station KKMT(FM), Columbia Falls, and AM Station KJJR, Whitefish.¹ Bee later withdrew its opposition,² but filed an unauthorized pleading to which Alpine responded.³

¹ The two Kalispell stations are located within the area Alpine seeks to serve by its proposed allotment, according to Bee, and the other two stations are located within the vicinity.

² Therefore, we will not further address those comments or their included counterproposal. Bee’s principal, Benny Bee, Sr., filed a statement that neither he nor Bee “promised or paid (or received) any consideration, directly or indirectly, in connection with the withdrawal of [Bee’s] opposition to the Bigfork rulemaking.” This statement complies with §1.420(j) of the Rules.

³ Bee filed a pleading entitled “Supplemental Notice of Relevant Precedent,” and Alpine filed a “Response to Supplemental Notice,” both well beyond the comment period in this proceeding. Upon perusal of the documents, we find them devoid of relevant information not already in the record before us and include unsubstantiated allegations not relevant to our disposition of this proceeding.

3. Alpine proposed to reallocate Channel 264C from Wallace to Bigfork under the provisions of Section 1.420(i) of the Commission's Rules. That section permits modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("Change of Community of License R&O"), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

4. Subsequent to the filing of the rulemaking petition, Wallace Station KSIL(FM) was downgraded and licensed to operate on Channel 264C2. (File No. BLH-20001215AAZ).⁴ Accordingly, we will evaluate Alpine's proposal to change its community of license from Wallace to Bigfork on the basis of the Station KSIL(FM)'s present operation as a Class C2 station. As indicated in the *Notice*, the proposed allotment reference site for Bigfork, Montana is located 147.5 kilometers (91.7 miles) away from the transmitter site for Station KSIL(FM) at Wallace, Idaho, insufficient to meet the Class C2 to Class C co-channel interstation separation requirement,⁵ and is, therefore, mutually exclusive with Station KSIL. Bigfork has no local aural transmission service. The *Notice* also cited a number of indicia that purportedly denote Bigfork as a community for allotment purposes. In addition, it noted that Wallace would retain local transmission service provided by the fulltime AM Station KWAL and, potentially, by unbuilt Station KQWK(FM).⁶ The station is now fulfilling that potential, having been granted a license (File No. BLH-20001205AAB) and operating with a new call sign, KTWD(FM). Therefore, reallocation of Station KSIL(FM) to Bigfork would result in there being two local transmission services in Wallace to serve its 1990 U.S. Census population of 1010.

5. Alpine states in response to the *Notice* that Bigfork has a population of 1461.⁷ Also in response to our inquiry as to whether there are indicia of a community that are identified specifically with Bigfork, Alpine provides a list of social, economic, and cultural organizations, and municipal services that incorporate Bigfork in their names. Bigfork is, reports Alpine, an artists' community where the Bigfork Festival of Arts is held annually. It boasts a number of

⁴ Prior to the downgrade, Alpine assigned its license for KSIL(FM) to Battani Communication, Inc. (File No. BAPH-19980501GF). We will refer, nevertheless, to petitioner's proposal as Alpine's.

⁵ The proposed Channel 264C at Bigfork would require a minimum co-channel separation distance of 249 km (154.8 mi) from a station operating on Channel 264C2. *See* Rule §73.207(b)(1).

⁶ During the pendency of this proceeding, the Commission denied a proposal to change the community of license of KQWK(FM) to Lolo, Montana and to downgrade it from Channel 248C2 (97.5 MHz) to Channel 248C3. *See* 14 FCC Rcd 21,110 (1999).

⁷ The 1990 Census identified Bigfork as part of the Creston-Bigfork Division of Flathead County, MT. Alpine reports that the 1990 census information provided by the Census and Economic Information Center, MT Department of Commerce subdivides the Division into tracts, of which Bigfork is one and is listed with a population of 1461.

artists' studios and galleries along its main street with the Bigfork Art and Cultural Center as its focal point. Bigfork has three performing arts organizations that sponsor theater, musicals, and concerts, each of which has "Bigfork" in its name. The Bigfork elementary school hosts a renowned annual charity and antiques show. Additionally, there are numerous other businesses and other organizations that identify themselves by name as Bigfork entities. Municipal services include water, sewer, power, trash removal, and a volunteer fire department.

Discussion

6. We have carefully reviewed Alpine's proposal and find that, on the strength of the indicia described above, Bigfork is indeed a community for allotment purposes, despite its lack of incorporation and reliance on the county for its governance. *See Semora, North Carolina*, 5 FCC Rcd 934 (1990). We also find, particularly in light of Bee's withdrawal of its opposing comments and included counterproposal, that Alpine's proposal would result in a preferential arrangement of allotments, as explained below. We have differences, however, with the methodology Alpine employed in evaluating the gain and loss areas resulting from the relocation of KSIL(FM) to Bigfork. Also, our analysis of the coverage area of the existing station at Wallace differs from that in Alpine's original proposal because of KSIL(FM)'s operation on the since-downgraded Channel 264C2. The results of that analysis do not, however, disturb our finding that the allotment of Channel 264C to Bigfork should be granted.

7. As a threshold matter, we make several observations. As stated in the *Notice*, Bigfork is not in or near an urbanized area. Therefore, no finding need be made as to whether Bigfork qualifies for a first local service preference under the Commission's allotment priorities.⁸ Accordingly, in response to the *Notice*, Alpine provided only a gain and loss study, the results of which were based on then-unbuilt KSIL(FM) as a Class C station. However, given the subsequent construction and licensing of KSIL(FM) as a Class C2 station, that station's coverage must be analyzed assuming maximum C2 facilities, *i.e.* 50 kilowatts effective radiated power or ERP and 150 meters antenna height above average terrain or HAAT. We also note that Alpine incorrectly evaluated its proposed Bigfork coverage area by assuming operation with maximum Class C facilities. Such use is contrary to our long-standing policy that requires coverage predictions for Class C stations to be determined assuming minimum Class C facilities. *See Greenup, Kentucky*, 6 FCC Rcd 1493, 1497 at note 7 (1991). Therefore, Alpine's study is no longer useful for analysis of either Wallace's or Bigfork's gain and loss areas.

8. To determine whether the public interest would be served by Alpine's proposal, we must compare it with the existing arrangement of allotments, as required by the *Change of Community R&O, supra*. In doing so, we first evaluate the existing coverage area of the Wallace allotment

⁸ The FM allotment priorities are: (1) First full-time service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [co-equal weight given to priorities (2) and (3).] *See Revision of FM Assignments and Procedures*, 90 FCC 2d 88, 92 (1982).

assuming maximum Class C2 facilities, which we find constitutes the entire loss area for this proposal. Our analysis further reveals that relocation of KSIL(FM) would leave no white area within the loss area. That is, no persons within its Class C2 primary service contour (60 dBu) would be left without aural reception service. We estimate the total number of persons residing within the Wallace loss area as 19,094, with more than three-quarters of that population regarded as well-served, *i.e.* receiving five or more services. Moreover, Wallace itself would have two remaining transmission services, namely AM Station KWAL and FM Station KTWD, which operates on Channel 248C2 and replicates almost exactly KSIL(FM)'s coverage. Therefore, a KSIL(FM) relocation would not result in significant loss of local transmission services.

9. The extent of the Bigfork coverage area was determined using minimum Class C facilities and would constitute the entirety of the gain area. Contrary to Alpine's original proposal in which the service contour of the unbuilt Wallace station overlapped that of the station as relocated to Bigfork, no overlap exists between the Class C2 service contour of KSIL(FM) in Wallace and the Class C contour of the station as relocated to Bigfork. Within the gain area, the staff's analysis reveals that there do exist some underserved areas, although with very small populations according the 1990 U.S. Census.

10. In determining a preferential arrangement of allotments, we use the FM allotment priorities. Particularly because the idealized circular coverage area of KTWD(FM) is virtually coincident with that of KSIL(FM), the Wallace loss area would not include any white areas, *i.e.* areas with no aural service, upon relocation of the station to Bigfork, and therefore, Priority 1 would not be triggered. Likewise, for the Bigfork gain area, Priority 1 would not be triggered because relocation of KSIL(FM) to Bigfork would not result in coverage of a formerly white area populated by a significant number of persons (55). On the other hand, areas would exist in the Wallace and Bigfork coverage areas where upon removal of KSIL(FM) to Bigfork only one service would be received. In the Bigfork area, however, we estimate that the reception area has no inhabitants, and, in the Wallace coverage area, a *de minimus* number of approximately 150 persons would no longer receive a second aural service. In the context of this case the relative sizes of the populations is not so disparate as to justify a preference for either the existing or proposed arrangement of allotments. Thus, Priority 2 would not be triggered for either arrangement. Next, we compare the two arrangements of allotments as to whether Priority 3 would be triggered. With two other transmission services already licensed to Wallace, the reallocation of Channel 264C2 to Bigfork as part of the existing arrangement of allotments would not trigger Priority 3. However, the proposed reallocation to Bigfork would provide the opportunity for the community to have its first local aural broadcast radio service, triggering Priority 3. We conclude, therefore, that Alpine's proposal to relocate KSIL(FM) as upgraded on Channel 264C and operate it at Bigfork would result in a preferential arrangement of allotments under allotment Priority 3.

11. Channel 264C can be allotted to Bigfork, consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Rule Section 73.315(a) of the Commission's Rules, at Alpine's requested transmitter site restricted to 26.8 kilometers (16.7 miles) east of Bigfork. Concurrence by the Canadian Government in the allotment at Bigfork, Montana has been received because Bigfork is located within 320 kilometers (199 miles) of

the U.S.-Canadian border. The reference coordinates for Channel 264C at Bigfork are N 48-02-45 and W 14-00-33.

12. Accordingly, pursuant to 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 June 25, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, IS AMENDED, with respect to the communities listed below,

<u>City</u>	<u>Channel No.</u>
Wallace, Idaho	248C2
Bigfork, Montana	264C

13. IT IS FURTHER ORDERED That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of the *Order* to the following:

Richard A. Helmick
 Cohn and Marks
 1920 N Street, N.W.
 Suite 300
 Washington, DC 20036
 (Petitioner’s Counsel)

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Alpine Broadcasting Limited Partnership for Station KSIL(FM), Wallace, Idaho IS MODIFIED to specify operation on Channel 264C at Bigfork, Montana, 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.

15. Pursuant to Commission Rule Section 1.1104(1)(k) and 2(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Alpine Broadcasting Limited Partnership, licensee of Station KSIL(FM), is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change of community from Wallace to Bigfork.

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

17. For further information concerning the above, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180. Questions pertaining to application filing process should be addressed to the Audio Services Division at (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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