

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-151
Table of Allotments,)	RM-9559
FM Broadcast Stations.)	RM-9932
(Rangely, Silverton and)	
Ridgway, Colorado))	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 14, 2001

Released: March 23, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it for consideration a Petition for Reconsideration (“reconsideration”), of the Report and Order (“R&O”), 15 FCC Rcd 18266 (2000), in this proceeding,¹ filed by Idaho Broadcasting Consortium, Inc., (“IBC”), permittee for Station KBNG, Channel 279C2, Silverton, Colorado. No comments in response to the reconsideration proposal were filed.

Background

2. The Commission issued a Notice of Proposed Rule Making (“Notice”) in this proceeding, 14 FCC Rcd 7184 (1999), in response to a rule making petition (RM-9559) filed by Mountain West Broadcasting (“Mountain West”). The Notice proposed the allotment of FM Channel 279C1 to Rangely, Colorado (pop. 2,278),² as that community’s first local aural transmission service. In response to the Notice, IBC filed a counterproposal requesting the substitution of Channel 279C1 for Channel 297C2 at Silverton (pop. 716), the reallocation of Channel 279C1 to Ridgway (pop. 423), as that community’s first local aural transmission service, and modification of its authorization accordingly. In order to provide a first local service at Rangely as well as Ridgway, IBC suggested an alternate site for Rangely located 26.3 kilometers (16.3 miles) north of the community³ to accommodate its preferred site.^{4, 5} Additionally, IBC proposed a

¹ Public Notice of the petition for reconsideration was given on November 1, 2000 (Report No. 2449).

²Population figures reported herein were taken from the 1990 U.S. Census.

³ Coordinates at the suggested alternate site are 40-19-02 NL and 108-51-46 WL.

⁴ The distance between the two communities is 226.5 kilometers (140 miles) whereas a minimum distance of 245 kilometers (152 miles) is required in this instance.

⁵ IBC requested a site located 12.4 kilometers (7.7 miles) NW of Ridgway at coordinates 38-10-13 NL and 107-53-59 WL.

Class A channel for allotment to Silverton, Colorado, as a replacement channel for Channel 279C1, and stated a commitment to apply for the Class A channel.

3. In the R&O we determined that the public interest would be better served by allotting Channel 279C1 to Rangely without a site restriction, as proposed in the Notice, rather than imposing a severe site restriction on the allotment as requested by IBC. Our determination was in accordance with Commission policy to allot channels with the least site restriction possible where the allotment will be open to applications, citing Vacaville, California, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). We also determined that use of an alternate site at Ridgway would accommodate IBC's proposal consistent with Commission precedent, citing Greenville, Texas, 6 FCC Rcd 6048 (1991) (further site restriction imposed where upgrade proponent had proposed to relocate its transmitter site). As a result, we selected an alternate site for Channel 279C1 at Ridgway, located 12.2 kilometers (7.6 miles) southeast of the community, which is less severe than the site restriction proposed for Rangely. Our decision was further buttressed by the fact that, as IBC is required to relocate its transmitter in any event to accommodate the allotment of Channel 279C1 at Ridgway, use of the alternate site should not unduly burden it, citing Rockport, Gregory, Alice and Armstrong, Texas, 4 FCC Rcd 8075 (1989). Finally, the R&O also allotted Channel 238A as a replacement channel for Silverton in order to prevent the removal of the community's potential first local aural service.

Petition for Reconsideration

4. In its petition for reconsideration, IBC argues that in determining to retain the original coordinates proposed at Rangely, the Commission relied upon its decision in Vacaville, supra (the Commission will impose the least theoretical site necessary for a new allotment). However, IBC argues that our decision to retain the reference coordinates originally proposed for Rangely rather than adopt its request to site restrict that allotment conflicts with the precedent established in Fair Bluff, North Carolina, 11 FCC Rcd 12662 (1996). IBC argues that the situation presented in Fair Bluff is similar to this proceeding, in that a site restriction was proposed for a new allotment to permit a licensee to improve its station's facilities by allowing the use of an omnidirectional, rather than a directional antenna.⁶ Although Vacaville was initially applied in the Fair Bluff proceeding, IBC advises that on reconsideration the Commission found that precedent to be contrary to the public interest as it hindered the improvement of an existing facility by favoring a vacant and unapplied for channel.⁷ IBC urges that the Fair Bluff decision plainly observed that the policy set forth in Vacaville was the result of

⁶ In Fair Bluff, the petitioner sought to either delete a vacant allotment or impose a site restriction on it to accommodate its application to operate its Station WDAR-FM omnidirectionally at Darlington, South Carolina (File No. BMPH-950224ID).

⁷ Two acceptable applications were filed for the vacant allotment at Fair Bluff, North Carolina, during the course of that proceeding, one of which was that of the petitioning party. Both applicants specified a transmitter site that complied with the technical requirements of the Commission's rules and was compatible with the pending application of Station WDAR-FM, Darlington, to operate omnidirectionally.

an allotment contest, where an alternate channel was to be favored over a requested channel to resolve a mutual exclusivity with an upgrade proposal. Therefore, IBC argues that Fair Bluff holds that Vacaville “stands for the policy that the Commission will not deny another station’s request to improve its facilities solely because of a ... site preference.” IBC argues that although its proposal at Ridgway conflicted with Rangely, it did not request the preference of one channel over another, but that each proposal could prevail with a suitable site restriction at Rangely to accommodate its site preference at Ridgway. Therefore, IBC urges that the precedent set forth in Fair Bluff controls in this instance and supercedes Vacaville. As a result, IBC urges that the reference coordinates proposed by it for Rangely and for Ridgway should be adopted.

Discussion

5. Section 1.429(b) of the Commission’s Rules sets forth the limited provisions under which the Commission will reconsider a rulemaking action. Reconsideration is warranted only if the petitioner cites error of fact or law, or has presented facts or circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. Eagle Broadcasting Co. v. FCC, 514 F.2d 852 (D.C. Cir. 1975). After carefully examining the record in this proceeding, we do not believe that IBC has met this burden; and we will affirm the Report and Order in this proceeding.

6. In the Report and Order, we were faced with two mutually exclusive proposals – the Notice of Proposed Rule Making (“NPRM”) proposal for a drop-in allotment at Rangely as a first local aural transmission service and IBC’s counterproposal to substitute Channel 279C1 for Channel 279C2 at Silverton, to reallocate Channel 279C1 to Ridgway as a first local aural transmission service, and to modify IBC’s authorization accordingly. Both of these proposals were compared under our FM allotment priorities.⁸ Even though both proposals would trigger priority three, Rangely would have won because it was a first local service to a larger community. See, Athens and Atlanta, Illinois, 11 FCC Rcd 3445 (1996) and Blanchard, Louisiana and Stephens, Arkansas, 8 FCC Rcd 7083 (1993) (competing proposals for a first local service is awarded to the more populous community). However, in the Report and Order, we decided that it was not necessary to choose between these mutually-exclusive proposals because it would be possible, by the use of a site restriction at either community, to grant both proposals. Under these circumstances, we determined that the public interest would be better served by granting both proposals. However, we were called upon to determine at which community to impose the site restriction and then to balance the site restriction. We determined that it was better to place the restriction on Ridgway rather than Rangely because the site restriction was less severe.

Specifically, if we placed the site restriction at Rangely, it would require a site restriction 26.3

⁸ The 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 of FM Allotment Policies and Procedures, 90 FCC 2d 88 (1982); recon. den. 56 RR 2d 448 (1984).

kilometers (16.3 miles) north of the community, as opposed to Ridgway at a site 12.2 kilometers (7.6 miles) southeast that was imposed by the Report and Order. Our view is further buttressed by the fact that the change of community from Silverton to Ridgway requires IBC to relocate its transmitter site in any event, and further, we note that the site restriction requested by IBC is only .2 kilometer further away in a different direction from the site restriction for Ridgway adopted in the Report and Order. Also, as we said in the Report and Order, our use of an alternate site at Ridgway does not preclude IBC from proposing a different site in its application for Channel 279C1 at that community.⁹

7. We continue to believe that this is the proper resolution of this case and are not persuaded by the IBC's arguments on reconsideration. As the site restriction at Rangely is on a comparative basis, it would be more severe than the site restriction required to accommodate IBC's proposal at Ridgway. Our policy is to use the least restrictive site possible for a new allotment, as we held in Vacaville, supra. Moreover, we note that based upon IBC's own engineering exhibit, the requested site restriction at Rangely is a mountainous area, and the record in this case does not indicate whether the site is either useable or available.¹⁰ As a result, given this fact, placing a severe site restriction on the Rangely allotment without assurances of availability and suitability does not seem prudent.

8. We do not believe the decision in Fair Bluff, supra, changes our approach for two reasons. First, the site restriction imposed in that case was a lot less severe than the instant site restriction. Specifically, the site restriction in Fair Bluff was only 12.7 kilometers (7.9 miles) whereas the site restriction requested by IBC on the Rangely allotment is 26.3 kilometers (16.3 miles). Second, there was no showing in Fair Bluff of topographical problems caused by the restricted site being located in a mountainous area, and the record contained some information to indicate that FAA approval would not be a problem.

9. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Idaho Broadcasting Consortium, Inc. IS DENIED.

⁹ See Melbourne, Florida, 5 FCC Rcd 1031 (1990).

¹⁰ The suitability of a site area is determined by whether a site can be located within an area complying with the minimum distance separation requirements of Section 73.207 and the city grade coverage and other requirements of Section 73.315. See Creswell, Oregon, 4 FCC Rcd 7040 (1989). The suitability of a site area also relates to the feasibility of using a particular area to accommodate an actual transmitter site, the theoretical or reference site also lying within that area. As the site requested at Rangely is in a mountainous area, there is no showing that it is a designated electronics site, or that there is any electrical power or road access provided to the area.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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