

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-13
Table of Allotments,)	RM-9679
FM Broadcast Stations.)	
(Aberdeen, Elma and Montesano, Washington))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 4, 2001 ; Released: April 13, 2001

By the Chief, Allocations Branch:

1. At the joint request of KAYO Broadcasting¹ and Marrow, Inc. (“petitioners”), the Allocations Branch has before it the Notice of Proposed Rule Making (“NPRM”), 15 FCC Rcd 2012 (2000), proposing the substitution of Channel 271C2 for Channel 271C3 at Elma, the reallocation of Channel 271C2 from Elma to Montesano, Washington, and the modification of Station KSWW(FM)’s (formerly KAPV(FM)) license accordingly. Petitioners also proposed the reallocation of Channel 257C1 from Aberdeen to Elma, Washington, and the modification of Station KAYO-FM’s license accordingly. Petitioners filed comments in support of the proposal reaffirming their intention to apply for the respective channels, if reallocated. No other comments were received.

2. The proposed reallocations were filed pursuant to the provisions of 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. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) (“Change of Community”). The NPRM requested that petitioners provide information as the overall public interest benefits that would be derived from the reallocations. In response to that request, petitioners state that Montesano is an incorporated community with a 1990 Census population of 3,147 persons. It is the county seat of Grays Harbor County (population 64,175). In contrast, Aberdeen has a 1990 U.S. Census population of 16,565. The Class C2 upgrade will result in a service increase of 2,576 square kilometers and 9,601 persons. In sum, petitioners contend that the reallocations will result in a first local service for Montesano; upgrade of Elma’s (population 3,011) only station; and an expansion of Station KSWW(FM)’s service to 9,601

¹ Black Hills Broadcasting, L.P. is now the licensee of Station KAYO-FM.

persons, of which 2,145 are underserved. Petitioners contend that these benefits amply compensate for the loss of Aberdeen's fourth local service and the creation of a slight Station KSWW(FM) loss area, all of which is well-served. Petitioners assert that the only detriment of the hypothetical move of KAYO-FM to a fully-spaced allotment site is the creation of a loss area, less than 1% of which will lose its fifth aural reception service. However, petitioners further contend that this hypothetical detriment is counterbalanced by the provision of a third local service to a large portion of the underserved gain area. Even so, the significance of the hypothetical loss would be further mitigated by the fact that Station KFMY(FM)'s construction which will eliminate the entire underserved loss area, and by KAYO-FM's plans to remain at its present site.

3. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change Community, supra. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

4. In making this comparison, we find that the upgrade and reallocation of Channel 271C2 from Elma to Montesano, Washington triggers priority (3)--first local service. Under this priority, Montesano would receive its first local aural transmission service, without depriving Elma of its sole local service, since Station KAYO-FM is proposed herein as a replacement service. Likewise, the reallocation of Channel 257C1 from Aberdeen to Elma, Washington will not deprive Aberdeen of its sole local service, since two AM stations and one FM station would remain licensed to the community.³ Neither reallocation would place a 70 dBu signal in or near an urbanized area, therefore, a Tuck analysis is not required.⁴

5. We believe the public interest would be served by substituting Channel 271C2 for Channel 271C3 at Elma, and reallocating Channel 271C2 from Elma to Montesano, Washington, as the community's first local aural transmission service. This upgrade and reallocation will enable Station KSWW(FM) to expand its service area. We also reallocate Channel 257C1 from Aberdeen to Elma, Washington as a replacement service. An engineering analysis has determined that Channel 271C2 can be reallocated to Montesano in compliance with the Commission's minimum distance separation

² The FM 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).]

³ Stations KXRO(AM), KBKW(AM) and KDUX-FM are licensed to the community.

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

requirements with a site restriction of 14.5 kilometers (9.0 miles) northwest to avoid a short-spacing to the licensed site of Station KINK-FM, Channel 270C, Portland Oregon.⁵ Likewise, Channel 257C1 can be reallocated to Elma with a site restriction of 14.5 kilometers (9.0 miles) west to avoid a short-spacing to the licensed site of Station KWJJ-FM, Channel 258C1, Portland Oregon.⁶ However, the allotment of Channel 271C2 is short-spaced to the licensed site of Station CFUV-FM, Channel 270B, Victoria, British Columbia, and to the proposed allotment of Channel 269A in Nanaimo, British Columbia. Also, the allotment of Channel 257C1 at Elma is short-spaced to the licensed site of Station CFOX(FM), Channel 257C, Vancouver, British Columbia, and to the proposed allotment of Channel 258A at Metchosin/Sooke, British Columbia. Since Elma and Montesano are located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence for Channel 271C2 at Montesano and for Channel 257C1 at Elma, as specially-negotiated, short-spaced allotments, were requested, but have not yet been received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence by the Canadian government for these allotments, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement." In accordance with Section 1.420(i) of the Commission's Rules, we modify Station KAYO-FM's license to specify operation Channel 257C1 at Elma, Washington, as its new community of license. In addition, we modify Station KSWW(FM)'s license to specify operation on Channel 271C2 at Montesano, Washington, as its new community of license.

6. Our action in approving the reallocation and change of community license of Station KSWW(FM), Channel 271C2, from Elma to Montesano, Washington, is premised upon the activation of Channel 257C1 at Elma to prevent the removal of the community's sole local aural service. Accordingly, consistent with precedent, we will condition the grant of an authorization to operate on Channel 271C2 at Montesano upon the activation of Channel 257C1 at Elma and the grant of program test authority.

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, May 29, 2001, 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:

City

Channel No.

⁵ The coordinates for Channel 271C2 at Montesano are 47-03-44 North Latitude and 123-44-44 West Longitude.

⁶ The coordinates for Channel 257C1 at Elma are 46-57-31 North Latitude and 123-35-18 West Longitude.

However, Black Hills Broadcasting, L.P. currently intends to continue operating Station KAYO-FM at its existing transmitter site pursuant to Section 73.215 of the Commission's Rules. Nevertheless, the allotment coordinates are fully-spaced under Section 73.207 of the Commission's Rules.

Aberdeen, Washington	284C2
Elma, Washington	257C1
Montesano, Washington	271C2

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Marrow, Inc., for Station KSWW(FM), Elma, Washington, IS MODIFIED to specify operation on Channel 271C2 at Montesano, Washington, 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, provided that Channel 257C1 at Elma, Washington, is activated and the station is on the air broadcasting.

(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.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license Black Hills Broadcasting, L.P., for Station KAYO-FM, Aberdeen, Washington, IS MODIFIED to specify operation on Channel 257C1 at Elma, Washington, 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, Marrow, Inc. and Black Hills Broadcasting, L.P., licensees of Stations KSWW(FM) and KAYO-FM, respectively, are required to submit a rule making fee addition to the fee required for the application to effect the upgrade and/or 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 petitioners, as follows:

Marrow, Inc.
P.O. Box 7034
Olympia, Washington 98512
(Licensee of Station KSWW(FM))

Black Hills Broadcasting, L.P.
13612 N.E. 37th Place
Bellevue, Washington 98005
(Licensee of Station KAYO-FM)

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

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

FEDERAL COMMUNICATIONS COMMISSION

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