

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

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

MEMORANDUM OPINION AND ORDER

(Proceeding Terminated)

**Adopted:** February 6, 2002

**Released:** February 8, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a Petition for Reconsideration filed by Bee Broadcasting, Inc. (“Bee Broadcasting”) directed to the Report and Order in this proceeding. 16 FCC Rcd 9591 (2001). Alpine Broadcasting Limited Partnership (“Alpine Broadcasting”) filed an Opposition to Petition for Reconsideration and Bee Broadcasting filed a Reply to Opposition to Petition for Reconsideration. For the reasons discussed below, we deny the Petition for Reconsideration.

2. At the request of Alpine Broadcasting, permittee of Station KSIL, Channel 264C, Wallace, Idaho, the Report and Order reallocated Channel 264C to Bigfork, Montana, and modified the Station KSIL construction permit to specify operation on Channel 264C at Bigfork. The request was filed pursuant to Section 1.420(i) of the Rules which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License (“Community of License”), 4 FCC Rcd 4870 (1989); recon. granted in part, 5 FCC Rcd 7094 (1990). In considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. We make this determination using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1988).<sup>1</sup> In this proceeding, the reallocation of Channel 264C provided a first local service to Bigfork and a net gain in service to 58,604 persons.

3. In response to that Report and Order, Bee Broadcasting filed a Petition for Reconsideration. In its Petition for Reconsideration, Bee Broadcasting contends that Alpine Broadcasting “defaulted on its evidentiary burden” of providing a gain and loss study for the proposed change in community of license, and reallocation of does not result in a preferential arrangement of allotments because Bigfork is “well-served” and 150 persons would be left with only one aural service. Bee Broadcasting also states that during the pendency of this proceeding, Station KSIL was downgraded to Class C2 status and, thus, the public was denied any opportunity to comment “on the changed proposal and must be reconsidered as a matter of law.” We will consider each of these arguments.

<sup>1</sup> The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

4. The fact that the gain and loss study submitted by Alpine Broadcasting was premised on maximum facilities for the unbuilt Station KSIL Class C facilities at Wallace and proposed Class C facilities at Bigfork was not fatal to this proposal. In this regard, we first note that subsequent to filing of its Petition for Rule Making, Station KSIL downgraded to a Class C2 facility. In light of this downgrade, we undertook our own gain and loss study which supported the proposed reallocation. In this instance, there is no legal requirement or useful purpose in having Alpine Broadcasting file a revised gain and loss study. Such a requirement would have delayed resolution of this proceeding and would only demonstrate that the actual loss area and population is smaller due to the Class C2 downgrade of Station KSIL. In regard to the proposed Class C gain area and population at Bigfork, we assume minimum facilities in order to assure actual service to a population if a proposal is granted. This policy is used to compare population gains between competing rulemaking proposals and is not appropriately used in a reallocation proceeding in which a station's existing allotment is compared to a proposed reallocation. Cf. Greenup, Kentucky, 6 FCC Rcd 1493 (1991). We also continue to believe that the reallocation is a preferential arrangement of allotments due to the fact that it will provide a first local service to Bigfork and result in a net service gain to 58,604 persons. Wallace will continue to receive local service from Station KWAL and Station KTWD. In regard to the 19,094 persons that will lose service, more than 75% of this population will continue to receive five or more services.<sup>2</sup> We recognize that the reallocation will result in 150 persons receiving only one aural service. This would be partially obviated by the fact that 55 persons will be receiving a first aural service. In any event, we believe that both of these population totals are de minimis and not of decisional significance in this proceeding. See Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas, 10 FCC Rcd 9360 (1995). Finally, the Bee Broadcasting argument regarding the Class C2 downgrading of Station KSIL and the need for public comment in this proceeding is not well taken. Station KSIL is now licensed as a Class C2 facility at Wallace. That action is now final and we afforded the public the opportunity to comment on that downgrade. This proceeding requested public comment on the proposed Class C allotment at Bigfork. There is no requirement in the Administrative Procedure Act or public interest benefit to revisit the Station KSIL downgrade in the context of this proceeding.

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Bee Broadcasting, Inc. IS DENIED.

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

8. For further information concerning this proceeding, contact Robert Hayne, Mass media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>2</sup> The Commission has considered five or more reception services to be "abundant." Family Broadcasting Group, 53 RR2d 662 (Rev. Bd. 1983), rev. denied FCC 83-559 (Comm'n Nov. 29, 1983); see also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).