

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

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-161
Table of Allotments,) RM-9929
FM Broadcast Stations.)
(Fort Bridger, Wyoming)
and Woodruff, Utah)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 2, 2002

Released: January 11, 2002

By the Chief, Allocations Branch:

1. At the request of M. Kent Frandsen (“petitioner”), licensee of Station KNYN(FM), Channel 256C1, Fort Bridger, Wyoming, the Allocations Branch has before it the Notice of Proposed Rule Making, 15 FCC Rcd 19046 ((2000)), proposing the reallocation of Channel 256C1 from Fort Bridger to Woodruff, Utah, and the modification of Station KNYN(FM)’s license accordingly.¹ Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if reallocated to Woodruff, Utah. Opposing comments were filed by KGNT Inc. Petitioner filed reply comments. After the record closed, the following pleadings were filed: Supplemental Comments accompanied by a Motion for Leave to File were filed by KGNT Inc; an Opposition to Motion for Leave to File Supplemental Comments and a Motion to Strike were filed by petitioner; and a Statement for the Record was filed by KGNT Inc.²

2. The proposed reallocation was 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”).

¹ A license to cover the construction permit (File No. BPH-19970703MN) for Channel 256C1 at Fort Bridger, Wyoming was granted on September 7, 2001.

² The Commission generally does not contemplate the filing of pleadings beyond the comment period. See Section 1.415 of the Commission Rules. Since the instant proposal will be denied, the pleadings are moot and will not be considered in this proceeding.

3. In its comments, KGNT Inc. argues that the proposed reallocation of Channel 256C1 from Fort Bridger to Woodruff would not result in the in a preferential arrangement of allotments and should be denied. Specifically, the reallocation would deprive Fort Bridger of its sole local service. Further, KGNT Inc. claims that there would be “no improvement in the reception service already provided by the station, since petitioner has not stated an intention to move to a site different from that specified” in its outstanding authorization, and petitioner already will provide the proposed new community with a 70 dBu city-grade signal and there is no evidence the “petitioner is unable to provide [its new proposed community] with any specialized service,” citing Van Wert, Ohio and Monroeville, Indiana, 7 FCC Rcd 6519 (1992). KGNT Inc. further argues that the only explanation for the proposed community change lies in the “freedom” it will give petitioner at some point in the future to change its transmitter site.

4. In its reply comments, petitioner states that, unlike Fort Bridger, Woodruff qualifies under Commission precedent as a “true community” for allotment purposes. Petitioner further states that Woodruff is a Census Designated Place with a 1990 U.S. Census population of 135 persons and is located in Rich County (population 1,725). It has a local government (mayor and city council), a post office, zip code, a fire department, several local business, a sizable ward congregation of the Church of Jesus Christ of Latter Day Saints. Woodruff is also a gathering place for the surrounding population of Rich County on occasions such as the Fourth of July, when its host a parade and rodeo, an as a host city for an internationally-known cross country bicycle race—the Race Across America. Conversely, petition argues that Fort Bridger has no elements which justify its continuing specification as the city of license for Station KNYN(FM). Petitioner asserts that Fort Bridger is not incorporated, and it is not a Census Designated Place. It has no local government or civic activities and little or no commercial activity. Petitioner concludes that since Fort Bridger has no “elements” that would define it as “community” for allotment purposes, it cannot be favored over Woodruff.

5. Moreover, petitioner states that Station KNYN(FM) does not seek now or in the future to change its transmitter site, and thus the reallocation will not result in a loss of service. Petitioner argues that KGNT Inc.’s objection now, based on engineering associated with a different proposal for a different site and different city of license, simply cannot be supported and should be rejected, citing Oraibi and Leupp, Arizona, 14 FCC Rcd 13547 (1999) (stating that “[a]ny suggestion that [petitioner] may subsequently relocated its transmitter site. . .amount to speculation and does not obviate our finding that the reallocation . . .will result in a preferential arrangement of allotments”).

6. As initial matter, we find that Woodruff is a “community” for allotment purposes. However, we also find that the “community” status issue raised by petitioner concerning Fort Bridger is moot since Fort Bridger was found to be a “community” for allotment purposes in a prior rulemaking proceeding and Channel 256C1 was allotted. Although petitioner stated in its petition that the reallocation would not result in the removal of service from Fort Bridger because the station was unbuilt and not an “existing service,” we note that a license was subsequently issued and Station KNYN(FM) is now on the air. That being the case, it is well-settled that the Commission will not remove a sole local service on which the public has come to rely on.

However, we recognize that the petitioner does not seek to relocate its transmitter site and will continue to provide a 70 dBu signal over Fort Bridger. Nonetheless, the reallocation would result in no gain area and would remove the sole local service from the more populous community of Fort Bridger (population 400)³ to the smaller community of Woodruff (population 194). Although the Commission generally prohibits the removal of a community's sole local service, "a waiver of the prohibition will be considered 'in the rare circumstances where removal of a local service might serve the public interest.'" See Change of Community, supra. However, we find no compelling public interest benefit in removing the sole local service at Fort Bridger to provide a first local service at Woodruff, Utah. Moreover, each community receives five or more reception services and is considered to be well-served. Therefore, the proposal to reallocate Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah will not be granted.

7. Accordingly, IT IS ORDERED, That the petition for rule making filed by M. Kent Frandsen on June 16, 2000, IS DENIED.

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

9. 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

³ Population figures are taken from the 2000 U.S. Census unless otherwise specified.