

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

In the matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ammon and Dubois, Idaho)1
MB Docket No. 04-427
RM-11127
RM-11239

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 8, 2005

Released: June 10, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Notice of Proposed Rulemaking ("Notice")2 issued at the request of Justin Robinson ("Petitioner") proposing the allotment of Channel 283A at Ammon, Idaho as the community's second local aural transmission service. In response to the Notice, Laramie Mountain Broadcasting, LLC ("Laramie"), filed a counterproposal requesting the allotment of Channel 283A at Dubois, Idaho. A second counterproposal was filed jointly by Millcreek Broadcasting, LLC, licensee of Stations KNJQ(FM), Manti, Utah, KUUU(FM), South Jordan, Utah and KUDD(FM), Roy, Utah; Simmons SLC-LS, LLC, licensee of Stations KDWY(FM), Diamondville, Wyoming, KAOX(FM), Kemmerer, Wyoming and KRAR(FM), Brigham City, Utah; Rocky Mountain Radio Network, Inc., licensee of Station KRMF(FM) Evanston, Wyoming; 3 Point Media -- Coalville, LLC, licensee of Station KCUA(FM), Naples, Utah; and College Creek Broadcasting, LLC successful bidder and applicant for four vacant auction allotments ("Joint Parties").3 On January 24, 2005, Petitioner withdrew his expression of interest in the allotment at Ammon, Idaho. On February 11, 2005, Joint Parties filed reply comments in response to the Notice. On May 20, 2005, Laramie and Joint Parties filed reply comments responding to the Public Notice of Laramie's counterproposal.

2. In their reply comments to the Laramie counterproposal, Joint Parties state that Channel

1 Dubois, Idaho has been added to the caption. See Public Notice Report No. 2707, released May 5, 2005.

2 Ammon, Idaho, 19 FCC Rcd 23594 (MB 2005)

3 Joint Parties' counterproposal requested the reallocation of Channel 286C from Manti, Utah to Kaysville, Utah; the reallocation of Channel 253C2 from Roosevelt, Utah, to Naples, Utah; the reallocation of Channel 298C from Orem, Utah to American Fork, Utah; the reallocation of Channel 300C from Roy, Utah, to Randolph, Utah. It also requested the substitution of Channel 288C for 287C2 at Diamondville, Wyoming, and the reallocation of Channel 288C from Diamondville to Oakley, Utah; the substitution of Channel 296C for 295C at Brigham City, Utah, and the reallocation of Channel 296C from Brigham City to Henefer, Utah; the substitution of Channel 223C1 for Channel 223C3 at Naples, Utah, and the reallocation of Channel 223C1 from Naples to Diamondville, Wyoming. Joint Parties' counterproposal also requested the following channel substitutions: Channel 290C for Channel 289C at Centerville, Utah; Channel 292C for Channel 291C at Evanston, Wyoming; Channel 283C1 for 290C1 at Thayne, Wyoming; Channel 294C for Channel 293C at Spanish Fork, Utah; Channel 298C for Channel 293C at Superior, Wyoming, or Channel 298C1 for Channel 293C1 at Superior, Wyoming; Channel 230C2 for Channel 297C1 or Channel 288C2 at Kemmerer, Wyoming (different sites); Channel 245C2 for Channel 290A or Channel 245C2 at Vernal Utah (different sites); Channel 223C3 for Channel 237C3 or Channel 238A at Wellington, Utah (different sites); Channel 237C2 for Channel 296C2 at Huntington, Utah; Channel 223A for Channel 223C2 at South Jordan, Utah; Channel 257C1 for Channel 295C1 at Rangely, Colorado.

286A is available at Dubois which will eliminate any conflict with their proposal, and that Laramie is willing to use that channel. Laramie concurs with Joint Parties' reply comments, withdraws its interest in Channel 283A at Dubois, and expresses its interest in alternate Channel 286A in lieu of Channel 283A at Dubois. These comments state that both proposals could be granted.

3. Our analysis of Joint Parties' counterproposal indicates that it is defective and we will dismiss it. It is well settled that counterproposals must be technically correct at the time of their filing.⁴ The proposal to substitute Channel 294C for Channel 293C at Spanish Fork, Utah does not provide city-grade coverage to any part of the community of Spanish Fork, in violation of Section 73.315 of the Rules. In addition, three other allotments, described herein, do not appear to be feasible because of terrain obstructions which would require maximum facilities requiring an extremely tall tower to place a city-grade signal over each respective community. Joint Parties have not acknowledged this issue or demonstrated that such towers could be constructed. Specifically, the reallocation of Channel 288C from Diamondville, Wyoming to Oakley, Utah would require a tower of at least 448 meters above ground level ("AGL") or 3,659 meters radiation center above mean sea level ("RCAMSL") at maximum Class C facilities. The reallocation of Channel 296C from Brigham City, Utah to Henefer, Utah, would require a tower of 1,190 meters AGL or 4,400 meters RCAMSL at maximum Class C facilities. Last, the substitution of Channel 296C2 for Channel 237C2 at Huntington, Utah, would require a tower of at least 751 meters, or 2,200 meters RCAMSL at maximum Class C2 facilities. Joint Parties have not addressed these deficiencies.

4. We accept both Petitioner's and Laramie's respective withdrawals of expression of interest.⁵ The only remaining proposal before us is the allotment of Channel 286A at Dubois, Idaho as the community's first local aural transmission service. Our analysis confirms that Channel 286A can be allotted at Dubois consistent with Commission regulations. Channel 286A is therefore allotted at Dubois without a site restriction.⁶

5. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A).

6. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective July 25, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Dubois, Idaho	286A

7. A filing window period for Channel 286A for Dubois, Idaho, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

⁴ See *Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas*, 3 FCC Rcd 6507 (MMB 1988).

⁵ Each withdrawal complies with the provisions of Section 1.420(j) of the rules.

⁶ The coordinates for Channel 286A at Dubois are 44-10-34 NL and 112-13-48 WL.

8. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.
9. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
Media Bureau