

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.
(Wilburton, Okemah, and McAlester,
Oklahoma)
MB Docket No. 05-166
RM-11228

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 2006

Released: May 12, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making ("NPRM") issued in response to a rulemaking petition jointly filed by Little Dixie Radio, Inc., KESC Enterprises, Inc., and Southeastern Oklahoma Radio, LLC ("Petitioners"); (2) supporting comments filed by the Petitioners; (3) objections filed separately by Maryellen Mooney and Doncie Campagna; and (4) a reply to the objections filed by the Petitioners. For the reasons discussed below, we grant the Petitioner's rulemaking petition and dismiss the objections.

BACKGROUND

2. At the request of the Petitioners, the NPRM proposed the reallocation and change of community of license for Station KESC(FM) from Channel 279C1 at Wilburton, Oklahoma (pop. 2,972) to Channel 279C1 at Okemah, Oklahoma (pop. 3,038), pursuant to Section 1.420(i) of the Commission's rules. To

1 Wilburton, Okemah, and McAlester, OK, Notice of Proposed Rule Making, 20 FCC Rcd 7582 (MB 2005).

2 When the rulemaking petition was filed, Little Dixie Radio, Inc., was the licensee of Stations KESC(FM), Wilburton, Oklahoma, and KMCO(FM), McAlester, Oklahoma; KESC Enterprises, Inc., was the proposed assignee of KESC(FM), and Southeastern Oklahoma Radio, LLC was the proposed assignee of Station KMCO(FM). On January 18, 2005, the Media Bureau staff granted the applications (BALH-20040610ABH and BALH-20040610ABL) to assign the licenses for Stations KESC(FM) and KMCO(FM) to KESC Enterprises and Southeastern Oklahoma Radio, respectively; and the parties consummated the transactions on January 28, 2005. The grants of the assignment applications are not final and are currently under Commission review. See Little Dixie Radio, Order, 20 FCC Rcd 4938 (2005).

3 The objections were not properly filed. Specifically, the objections were not addressed to the Office of the Secretary as required by the NPRM and did not contain a docket or rulemaking number. Additionally, the Petitioners state that the Campagna objection was not served on the Petitioners. We will, however, consider these objections briefly because the Petitioners replied to these objections and provided copies of these letters for inclusion in the record.

4 This rule permits 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.

prevent the removal of the sole local aural service at Wilburton, the *NPRM* also proposed the reallocation and change of community of license for Station KMCO(FM) from Channel 267C1 at McAlester, Oklahoma (pop. 17,783) to Channel 267C1 at Wilburton, Oklahoma. The Petitioners filed comments, reiterating their expressions of interest in the reallocations of Stations KESC(FM) and KMCO(FM).

3. In their objections, Mooney and Campagna claim that KESC(FM) is needed in Wilburton to promote the community and its businesses and that the “back-fill” reallocation of Station KMCO(FM) from McAlester to Wilburton is an inadequate substitute for Station KESC(FM).⁵ In support of this position, they contend that Station KMCO(FM) is inferior from a technical standpoint because its signal “barely reaches” the city limits of Wilburton. Both objectors also suggest that the “country/western” format on KMCO(FM) is not as desirable as KESC(FM)’s “Easy Listening” format. Additionally, the Campagna letter objects that Station KESC(FM) is being relocated from a rural to an urban area. In reply, the Petitioners contend that Station KMCO(FM) is not technically inferior to Station KESC(FM) because the stations are co-located and operate with the same effective radiated power and that there is no reason why Station KMCO(FM) would be unable to promote the community of Wilburton and serve the city’s residents and businesses.

DISCUSSION

4. As a threshold matter, we find that the objections raised by Mooney and Campagna do not warrant denial of the Petitioners’ proposal. First, we disagree with the objectors that Station KMCO(FM) is an inadequate substitute for Station KESC(FM) based on its signal strength. On the contrary, Station KMCO(FM) is not changing its transmitter site, and from its present site, the Petitioners have demonstrated that it will continue to provide a 70 dBu signal over 100 percent of Wilburton as required by Section 73.315(a) of the Commission’s Rules.⁶ Second, the objectors are speculating that Station KMCO(FM) will not be able to serve the needs and interests of Wilburton; such issues are more appropriately raised in connection with a station’s license renewal application than at the allotment stage. Third, the Commission does not review program format changes and leaves such choices to market forces to promote diversity of programming while avoiding the administrative difficulties engendered by such review.⁷ Fourth, the reallocation of Station KESC(FM) to Okemah is not a migration from a rural to an urban area. Okemah is not located within any Urbanized Area as defined by the U.S. Census, and the relocated station would not place a city grade signal over any portion of an Urbanized Area.

5. We will grant the Petitioners’ rulemaking petition because it satisfies our rules and policies on change of community of license. First, Stations KESC(FM) and KMCO(FM)’s existing and proposed channels are mutually exclusive with each other. Second, there will not be a removal of a sole local service at Wilburton because the reallocation of Station KESC(FM) to Okemah will be conditioned upon the initiation of service by “back-fill” Station KMCO(FM) in Wilburton. Third, the proposal will result in a preferential arrangement of allotments under the FM Allotment Priorities⁸ because adding a first local service at Okemah and maintaining a first local service at Wilburton, triggering Priority (3) twice, would be preferable to retaining a fifth local service at McAlester under Priority (4) and maintaining a first local

⁵ Mooney’s objection also contains a petition signed by approximately 170 residents of Wilburton, requesting that Station KESC(FM) not be removed to Okemah.

⁶ See Petitioners’ Supplement to Petition for Rule Making, Technical Exhibit, Figure 4.

⁷ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981).

⁸ 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 is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1988).

service at Wilburton under Priority (3).⁹

6. Okemah is a community for allotment purposes because it is incorporated and listed in the U.S. Census. The Petitioner also sets forth various indicia of community status. Okemah is governed by a manager and five council members, has its own police and fire departments, provides water and sewer service, and operates three schools through the Okemah Public School District. Okemah has its own hospital, public library, weekly newspaper, parks, recreation facilities, numerous churches, several civic organizations, and numerous businesses.

7. Channel 279C1 can be reallocated to Okemah at the Petitioners' proposed site, which is located 21.3 kilometers (13.3 miles) south of Okemah, in compliance with the Commission's minimum distance mileage separations.¹⁰ The reference coordinates for this proposed allotment are 35-14-22 NL and 96-18-48 WL. Channel 267C1 can be reallocated to Wilburton at Station KMCO(FM)'s current site at reference coordinates 34-59-13 NL and 95-42-10 WL.

8. We note that reallocated Channel 279C1 at Okemah will provide a gain in service to 171,300 persons and a loss of service to 54,629 persons, for a net gain of service to 116,671 persons. However, 54,462 people in the loss area will continue to be well served with five or more aural services and that 167 persons in the loss area will be reduced from five to four aural services. Further, there will be no gain or loss of service by the reallocation of Channel 267C1 from McAlester to Wilburton because there will be no change of transmitter site for Station KMCO(FM), which already provides a city-grade (70 dBu) signal over Wilburton.

9. Accordingly, pursuant to the authority contained 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 June 26, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
McAlester, Oklahoma	286A
Okemah, Oklahoma	279C1
Wilburton, Oklahoma	267C1

10. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the licenses for the stations listed below ARE MODIFIED to specify operation on channels and/or communities listed below, subject to the following conditions:

<u>Station</u>	<u>Community</u>	<u>Channel</u>
KESC(FM)	Okemah, Oklahoma	279C1
KMCO(FM)	Wilburton, Oklahoma	267C1

⁹ See, e.g., *Corinth, Scotia, and Hudson Falls, NY*, Report and Order, 16 FCC Rcd 13305 (MMB 2001) (the totality of service improvements resulting from a proposed change of community proposal are taken into account when determining whether an allotment proposal should be approved); and *Chillicothe, Dublin, Hillsboro, and Marion, OH*, Report and Order, 20 FCC Rcd 6305 (MB 2005), *recon. pending*.

¹⁰ 47 C.F.R. § 73.207.

- (a) Within 90 days of the effective date of this *Order*, the licensees shall submit to the Commission minor change applications for construction permits (Form 301);
- (b) Upon grant of the construction permits, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules;
- (c) Operating authority for Station KESC(FM), Channel 279C1, at Okemah, Oklahoma may not be granted until operations have been commenced by Station KMCO(FM), Channel 267C1, at Wilburton, Oklahoma.
- (d) 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.

11. 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).

12. IT IS FURTHER ORDERED, That the petition for rule making filed by Little Dixie Radio, Inc., KESC Enterprises, Inc., and Southeastern Oklahoma Radio, LLC IS GRANTED.

13. IT IS FURTHER ORDERED, That the objections filed by Maryellen Mooney and Doncie Campagna ARE DISMISSED.

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

15. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau