

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

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-245
Table of Allotments,) RM-11264
FM Broadcast Stations.) RM-11357
(Corona de Tucson, Sierra Vista, Tanque Verde)
and Vail, Arizona, Animas, Lordsburg and)
Virden, New Mexico.)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 30, 2007

Released: July 31, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding which was initiated by a petition for rule making filed by CCR-Sierra Vista IV, LLC ("CCR-Sierra"), licensee of Station KZMK, Channel 265A, Sierra Vista, Arizona.¹ Cochise Broadcasting, LLC and Desert West Air Ranchers Corporation ("Cochise Desert") jointly filed a Counterproposal (the "Counterproposal") and Reply Comments. CCR-Sierra filed Comments and an Opposition to Counterproposal. For the reasons discussed below, we are modifying the authorizations of three stations to specify a new community of license. In addition, we are allotting new channels to two communities as first local services.

I. BACKGROUND

2. The *Notice* proposed the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, and modification of the Station KZMK license to specify Tanque Verde as the community of license. This would provide Tanque Verde with its first local service. This request was filed pursuant to Section 1.420(i) of the Commission's 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.² *Community of License* requires that any reallocation result in a preferential arrangement of allotments. In making this determination, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

¹ *Sierra Vista and Tanque Verde, Arizona*, Notice of Proposed Rule Making, 20 FCC Rcd 12982 (MB 2005) ("Notice").

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). 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).

3. In response to the *Notice*, Cochise Broadcasting, LLC, licensee of Station KKYZ, Channel 267C3, Corona de Tucson, Arizona, and permittee (File No. BNPH-20050609ABD) of Channel 279C3, Lordsburg, New Mexico, and Desert West Air Ranchers Corporation, licensee of Station KRDX, Channel 253A, Vail, Arizona, jointly filed a Counterproposal. The Counterproposal proposes the reallocation of Channel 267C3 from Corona de Tucson to Tanque Verde, Arizona, and modification of the Station KKYZ license to specify Tanque Verde as the community of license. In order to replace the loss of the sole local service at Corona de Tucson, Cochise Desert proposes the reallocation of Channel 253A from Vail, Arizona, to Corona de Tucson, and modification of the Station KRDX license to specify Corona de Tucson as the community of license. Station KRDX has not yet commenced operation at Vail. In order to replace the service that would have been provided by Station KRDX, Cochise Desert proposes the substitution of Channel 279A for Channel 279C1 at Lordsburg, New Mexico, reallocation of Channel 279A to Vail, and modification of its outstanding construction permit to specify operation on Channel 279A at Vail.⁴ To replace service that would have been provided by the Channel 279C1 allotment at Lordsburg, Cochise Desert proposes the allotment of Channel 279C1 to Animas, New Mexico, and Channel 228C to Virden, New Mexico.

4. Cochise Desert opposed the CCR-Sierra proposal contending that a Channel 265A reallocation to Tanque Verde is unacceptable due to the fact that the proposed transmitter site is located within the Pusch Ridge Wilderness Area.⁵ CCR-Sierra opposed the Cochise Desert Counterproposal arguing that Cochise Desert's Counterproposal for a Channel 267C3 reallocation to Tanque Verde is not mutually exclusive with Station's KKYZ's underlying allotment or license for Channel 269A at Sierra Vista. CCR-Sierra also states that the proposed Channel 267C3 allotment at Tanque Verde requires an antenna 476 feet above ground near the Davis Monthan Air Force Base and that Cochise Desert has provided no evidence that such a tower could obtain local zoning or FAA approval. Moreover, CCR-Sierra contends that a Channel 267C3 station at Tanque Verde would need to protect Channel 266B at Sasabe, Sonora, Mexico. In regard to the reallocation of Channel 253A to Corona de Tucson to replace the loss of the sole local service resulting from the reallocation of Channel 267C3 to Tanque Verde, CCR-Sierra states that there is no line-of-sight from the antenna to the community of Corona de Tucson and, as such, this proposal would not provide Corona de Tucson with a 70 dBu signal as required by Section 73.315(a) of the rules.⁶ With respect to the reallocation of Channel 279A to Vail, CCR-Sierra notes that this reallocation proposal was not accompanied by a *Tuck*⁷ showing and that Mexico has objected to this allotment. Finally, CCR-Sierra asserts that Animas, New Mexico, is not a community for allotment purposes and that the proposal for Channel 228C1 at Virden, New Mexico, does not conflict with any proposal in this proceeding and therefore, should not be considered in the context of this proceeding.

⁴ Cochise Broadcasting, LLC is the permittee of the Channel 279C1 construction permit at Lordsburg, New Mexico (File No. BNPH-20050609ABD).

⁵ Counterproposal at 2.

⁶ 47 C.F.R. § 73.315(a).

⁷ *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 3222 (1990).

II. DISCUSSION

5. At the outset, we reject the Cochise Desert contention that CCR-Sierra's proposed transmitter site is unavailable. CCR-Sierra identified four Commission licensed facilities already located within the Pusch Ridge Wilderness Area. Unlike *Grand View, Idaho*, and *Ketchum, Idaho, et. al.*, Cochise Desert has not submitted any documentation suggesting that CCR-Sierra would not be afforded similar consideration with respect to its proposal within the Pusch Ridge Wilderness Area.⁸ In any event, CCR-Sierra has identified sites within the Coronado National Forest that also would comply with Commission technical requirements. There are currently broadcast facilities licensed within the Coronado National Forest.⁹ As such, there is no basis to conclude that a transmitter site would not be available for a Channel 265A allotment at Tanque Verde.¹⁰

6. We also reject the CCR-Sierra argument that the Cochise Desert proposal for Channel 267C3 at Tanque Verde and the Channel 253A proposal at Corona de Tucson would each fail to provide a 70 dBu signal to the respective communities of license as required by Section 73.315(a) of the rules because of a major terrain obstruction between the transmitter site and the community of license.¹¹ In regard to Channel 267C3 at Tanque Verde, the proposed transmitter site is 12.5 kilometers from Tanque Verde and the purported major obstruction is 8 kilometers from the transmitter site. At maximum facilities, the radiation center would be 100 meters above average terrain ("HAAT") and 981 meters above mean sea level ("AMSL"). The referenced obstruction is 892 meters AMSL, and the community of Tanque Verde is 813 meters AMSL. Review of CCR-Sierra's own terrain path profiles shows the maximum terrain protrusion into the line-of-site from the theoretical radiation center to Tanque Verde is a mere 12 meters, and thus cannot be characterized as a "major" obstruction. Furthermore, our engineering analysis determined that a signal in excess of 70 dBu will be provided to Tanque Verde. We made this determination on the basis of the standard FM propagation methodology set forth in Section 73.313(a) of the rules. In developing this methodology, the Commission assumed "uniform terrain." Uniform terrain is the average terrain found in all areas of the United States, excluding sharp variations such as ridges and valleys. The F(50,50) curves, used to determine the propagation of the FM signal, assume a terrain variance of 50 meters along radials measured between 3 and 16 kilometers from the transmitter site. In this instance, there is no terrain variance in excess of 50 meters and therefore, no basis to depart from calculating coverage on the basis of standard methodology.

⁸ *Grand View, Idaho*, Report and Order, 15 FCC Rcd 2768 (MMB 2000)(letter from a federal official at the Bureau of Land Management stating that land was unavailable for a transmitter site); *Ketchum, Jerome and Rupert, Idaho, and Coalsville, Naples, Huntsville, South Jordan, Toole, Dale, Salina, Parowan and Payson, Utah*, Report and Order, 19 FCC Rcd 292 (MB 2004)(submitted letter from District Ranger at Sawtooth National Forest stating that no electricity or roads were available and the proposed transmitter site was located in a habitat for wintering wildlife).

⁹ Station KGUN-TV, Tucson, Arizona, Station KUAT-TV, Tucson, Arizona, Station KVOA-TV, Tucson, Arizona, Station KXGR-TV, Tucson, Arizona, FM Station KUAT, Tucson, Arizona, and FM Station KXZI, Tucson, Arizona.

¹⁰ See *Alden Communications Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 3937 (MMB 1988)(a willingness by the government to consider a request for use of land sufficient to provide a reasonable assurance of site availability).

¹¹ 47 C.F.R. § 73.315(a).

7. CCR-Sierra argument concerning Channel 253A at Corona de Tucson is also not persuasive. At the maximum HAAT of 100 meters, we have not been able to identify any significant obstruction between the proposed transmitter site and Corona de Tucson. In any event, using the "standard Longley Rice free space formula," CCR-Sierra asserts that a signal strength of only 62.4 dBu would be provided to Corona de Tucson. In order to use such an alternate propagation methodology, Section 73.313(e) of the rules requires that the terrain "departs widely" from the 50-meter value incorporated into the standard methodology. In this proceeding, no showing has been submitted to demonstrate the required variation.¹² In the absence of such a submission, Section 73.313(a) must be used to calculate FM signal strength.

8. CCR-Sierra also asserts that a Channel 267C3 allotment at Tanque Verde would require a 476-foot tower to provide line-of-sight from the transmitter site to Tanque Verde. According to CCR-Sierra, this site is "near" the Davis Monthan Air Force Base and Cochise Desert has not provided evidence that FAA or local zoning approval could be obtained. In a rulemaking proceeding, we presume that the proposed facility can be constructed consistent with local zoning requirements and would gain FAA approval. Both of these presumptions are rebuttable.¹³ CCR-Sierra has not provided a showing or exhibit from an aeronautical consultant or local zoning official which puts this presumption in issue.¹⁴

9. Both CCR-Sierra and Cochise Desert seek a preference as a first local service for Tanque Verde. The respective proposals for a Channel 265A reallocation and a Channel 267C3 reallocation to Tanque Verde are also mutually exclusive. Tanque Verde is located within the Tucson Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.¹⁵ In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community. The Counterproposal includes a *Tuck* exhibit in which Cochise Desert attempts to establish the independence of Tanque Verde from the Tucson Urbanized Area. This exhibit does not demonstrate that a proposal to reallocate a channel to Tanque Verde is entitled to consideration as a first local service. For this reason, we will treat each Tanque Verde proposal as advancing Priority (4). However, even if we had concluded that Tanque Verde was entitled to a first local service preference, this finding would not provide a basis for distinguishing between these proposals under the allotment priorities.

¹² 47 C.F.R. § 73.313(e).

¹³ See *San Clemente, California*, Memorandum Opinion and Order, 3 FCC Rcd 6728 (1988).

¹⁴ See *Pueblo, Pueblo West, Canon City and Calhan, Colorado*, Report and Order, 13 FCC Rcd 690 (MMB 1998); see also *Vero Beach, Florida*, Memorandum Opinion and Order, 3 FCC Rcd 1049 (MMB 1989), *rev. denied*, 4 FCC Rcd 2184 (1989).

¹⁵ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

10. As discussed below, the Cochise Desert Counterproposal proposes a first local service at Animas and Virden, New Mexico, which are considered under Priority (3) of the FM Allotment Priorities. Accordingly, we are granting the Cochise Desert Counterproposal. In doing so, we recognize that the CCR-Sierra proposal would provide a net gain in service to 579,265 persons compared to Cochise Desert's net gain in service to 315,248 persons. A net gain in service is a public interest matter which is considered under Priority (4). We also note that both of these populations are already served by a least twelve other stations in the Tucson Urbanized Area.¹⁶

11. As requested, we are reallocating Channel 267C3 from Corona de Tucson to Tanque Verde, Arizona, and are modifying the license of Station KKYZ to specify Tanque Verde as the community of license.¹⁷ In doing so, we reject the CCR-Sierra argument that this proposal cannot be considered because it is not mutually exclusive with the current operation of Station KKYZ on Channel 269A at Sierra Vista. In MB Docket No. 03-141, the Station KKYZ, Channel 269A, Sierra Vista, license was modified to specify operation on Channel 267C3 at Corona de Tucson.¹⁸ That action is now final and the Channel 267C3 authorization at Corona de Tucson is, in fact, mutually exclusive with Channel 267C3 at Tanque Verde.

12. In order to ensure the continuation of local service at Corona de Tucson, we are reallocating Channel 253A from Vail, Arizona, to Corona de Tucson, and are modifying the Station KRDX license to specify Corona de Tucson as the community of license.¹⁹ This reallocation does not require a change in the Station KRDX transmitter site. In order to replace the sole local service at Vail, we are substituting Channel 279A for Channel 279C1 at Lordsburg, New Mexico, reallocating Channel 279A to Vail, and modifying the construction permit (File No. BNPH-20050609ABD) to specify operation on Channel 279A at Vail.²⁰ Lordsburg will continue to receive local service from Station KPSS-FM. In comparing the Counterproposal versus the original CCR-Sierra proposal under *Revision of FM Assignment Policies and Procedures, supra*, we recognize that a Channel 279C1 allotment at Lordsburg would have ultimately provided a first aural service to 1,327 persons and a second aural service to 319 persons. In order to replace this service that would have been provided by the Channel 279C1 allotment at Lordsburg, we are allotting Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico.²¹ As replacements for the loss of a first

¹⁶ The Commission has considered five or more services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-599 (Comm'n Nov. 29, 1983); *see also LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

¹⁷ The reference coordinates for the Channel 267C3 allotment at Tanque Verde, Arizona, are 32-19-59 and 110-45-19.

¹⁸ *Sierra Vista and Corona de Tucson, Arizona*, Report and Order, 19 FCC Rcd 10997 (MB 2004).

¹⁹ The reference coordinates for the Channel 253A allotment at Corona de Tucson, Arizona, are 32-55-39 and 110-37-57.

²⁰ The reference coordinates for the Channel 279A allotment at Vail, Arizona, are 31-58-16 and 110-35-59.

²¹ The reference coordinates for the Channel 279C1 allotment at Animas, New Mexico, are 31-56-50 and 108-28-45. The reference coordinates for the Channel 228C1 allotment at Virden, New Mexico, are 32-24-12 and 108-53-59.

and a second aural service that would have been provided by Channel 279C1 at Lordsburg, these allotments are an integral part of the Counterproposal. In addition, the reallocation of Channel 279A to Vail is necessary to accommodate Channel 279C1 at Animas. Both allotments will be a first local service under FM Allotment Priority (3). Contrary to the CCR-Sierra assertion, Animas has sufficient indicia to qualify as a community for allotment purposes.²² Animas has its own local businesses, a post office, churches as well as its own zip code. According to the 2005 Rand McNally Road Atlas, it has a population of 200 persons. A Channel 279C1 allotment at Animas will serve 9,069 persons including a first aural service to 437 persons and a second aural service to 3,343 persons. Virden is an incorporated community listed in the 2000 U.S. Census with a population of 143 persons. A Channel 228C1 allotment at Virden will serve 21,317 persons including a first aural service to 1,237 persons and a second aural service to 319 persons.

13. Tanque Verde, Corona de Tucson, Vail, Animas and Virden are all located within 320 kilometers (199 miles) of the U.S.-Mexican border. Mexican concurrence has been requested, but not received, for Channel 267C3 at Tanque Verde, Channel 253A at Corona de Tucson, Channel 279A at Vail, Channel 279C1 at Animas and Channel 228C1 at Virden, as special negotiated restricted allotments. However, rather than delay the filing of the modification applications or general applications for the new allotments, we allot those channels at this time. If construction permits are granted prior to the receipt of formal concurrence in the allotments by the Mexican government, the authorizations will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the USA-Mexican FM Broadcast Agreement, or if specifically objected to by Mexico."

14. 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).

III. ORDERING CLAUSES

15. Accordingly, pursuant to authority contained 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 September 14, 2007, 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:

<u>City</u>	<u>Channel No.</u>
Animas, New Mexico	279C1
Virden, New Mexico	228C1

²² Cf. *Kenansville, Florida*, Memorandum Opinion and Order, 10 FCC Rcd 9831 (1995) (listed in Rand McNally Commercial Atlas, post office and zip code, a church, and local businesses and civic organizations sufficient to establish community status).

16. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283 and 1.420(i), IT IS ORDERED, That the effective September 14, 2007, the Media Bureau's Consolidated Data Base System will reflect the following stations in Arizona and New Mexico: (1) Channel 267C3 at Tanque Verde, Arizona, for Station KKYZ, in lieu of Channel 267C3 at Corona de Tucson, Arizona; (2) Channel 253A at Corona de Tucson, Arizona, for Station KRDX, in lieu of Channel 253A at Vail, Arizona; and (3) Channel 279A at Vail, Arizona, for the outstanding construction (File No. BNPH-20050609ABD), in lieu of Channel 279C1 at Lordsburg, New Mexico.

17. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cochise Broadcasting, LLC for Station KKYZ, Channel 267C3, Corona de Tucson, Arizona, IS MODIFIED to specify operation Tanque Verde, Arizona, as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules once Station KRDX commences operation at Corona de Tucson, Arizona;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

18. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Desert West Air Ranchers Corporation for Station KRDX, Channel 253A, Vail, Arizona, IS MODIFIED, to specify Corona de Tucson, Arizona, as the community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules once Cochise Broadcasting, LLC commences operation on Channel 279A at Vail, Arizona;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

19. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cochise Broadcasting, LLC for the outstanding construction permit (File No. BNPH-20050609ABD) for the Channel 279C1 allotment at Lordsburg, New Mexico, IS MODIFIED, to specify operation on Channel 279A at Vail, Arizona, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301) specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;

(c) Nothing herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

20. Pursuant to Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, any party seeking a change in 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 rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees receiving an upgrade and/or change in community of license are required to submit a rulemaking fee in addition to the fee required for the application to affect the upgrade and/or change in community of license.

21. A filing window for the Channel 279C1 allotment at Animas, New Mexico, and the Channel 228C1 allotment at Virden, New Mexico, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent *Order*.

22. 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).

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

24. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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