

**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)	
Viriden, New Mexico.)	

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: March 19, 2008

Released: March 21, 2008

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by CCR-Sierra Vista IV, LLC (“CCR-Sierra”), licensee of Station KZMK, Channel 265A, Sierra Vista, Arizona, directed to the *Report and Order* in this proceeding.¹ Cochise Broadcasting, LLC and Desert West Air Ranchers Corporation (“Cochise Desert”) jointly filed an Opposition to Petition for Reconsideration. CCR-Sierra filed a Reply to Opposition to Petition for Reconsideration. For the reasons discussed below, we deny the Petition for Reconsideration.

I. BACKGROUND

2. At the request of CCR-Sierra Vista IV, LLC (“CCR-Sierra”), licensee of Station KZMK, Channel 265A, Sierra Vista, Arizona, the *Notice of Proposed Rule Making* 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.² 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.³ *Community of License* requires that any reallocation proposal be mutually exclusive with the station’s current authorization and that the reallocation result in a preferential arrangement of allotments. In making this assessment, we compare the

¹ *Corona de Tucson, Sierra Vista, Tanque Verde and Vail, Arizona, Animas, Lordsburg and Viriden, New Mexico, Report and Order*, 22 FCC Rcd 13933 (MB 2007).

² *Sierra Vista and Tanque Verde, Arizona, Notice of Proposed Rule Making*, 20 FCC Rcd 12982 (MB 2005).

³ *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).

existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴

3. In response to the *Notice*, Cochise Broadcasting, LLC (“Cochise”), 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 proposed 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 proposed 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 proposed 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.⁵ To replace service that would have been provided by the Channel 279C1 allotment at Lordsburg, Cochise Desert proposed the allotment of Channel 279C1 to Animas, New Mexico, and Channel 228C to Virden, New Mexico.

4. In the *Report and Order*, we reallocated Channel 267C3 from Corona de Tucson to Tanque Verde, Arizona, and modified the Station KKYZ license to specify Tanque Verde as the community of license. In doing so, we rejected CCR-Sierra’s arguments concerning technical acceptability of the proposed Channel 267C3 reallocation to Tanque Verde, and the proposed reallocation of Channel 253A to Corona de Tucson. We also rejected the CCR-Sierra arguments that Animas, New Mexico, is not a community for allotment purposes and that the proposed Channel 228C1 allotment at Virden, New Mexico, cannot be considered because it does not conflict with any proposal in this proceeding.

5. In support of its Petition for Reconsideration, CCR-Sierra again contends that both the proposed Channel 267C3 allotment at Tanque Verde and the proposed Channel 253A allotment at Corona de Tucson would not provide the requisite 70 dBu to the respective communities.⁶ CCR-Sierra also contends that the proposed antenna structure for the Channel 267C3 allotment at Tanque Verde would be a hazard to air navigation. In addition, CCR-Sierra reiterates its earlier arguments that Animas, New Mexico, is not a community for allotment purposes and that the proposed reallocation of Channel 267C3 to Tanque Verde and modification of the Station KKYZ is not mutually exclusive with the current Station KKYZ operation. Finally, CCR-Sierra argues that several of the Cochise Desert proposals are

⁴ *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).

⁵ Cochise Broadcasting, LLC is the permittee of the Channel 279C1 construction permit at Lordsburg, New Mexico (File No. BNPH-20050609ABD).

⁶ See 47 C.F.R. § 73.315(a).

short-spaced to Mexican allotments and stations.

II. DISCUSSION

6. At the outset, we 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.⁷ CCR-Sierra has submitted an engineering exhibit using the “standard Longley Rice free space formula” asserting that, due to major terrain obstructions between the respective transmitter sites and communities of license, the requisite 70 dBu signal would not be provided to both Tanque Verde and Corona de Tucson. As stated in the *Report and Order*, determinations of coverage are based on 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 an FM signal, assume a variance of 50 meters along radials measured between 3 and 16 kilometers from the transmitter site. In order to use such an alternate propagation methodology, Section 73.313(e) of the rules requires that the “departs widely” from the 50-meter value incorporated into the standard methodology. In its Petition for Reconsideration, CCR-Sierra submitted an engineering exhibit depicting the elevation along six radials indicating a terrain variance in excess of 50 meters. This exhibit does not warrant a departure from the standard FM propagation methodology for two reasons. First, none of the radials submitted in the engineering exhibit include Tanque Verde, in violation of Section 73.313(d)(1) of the rules. Second, in its engineering exhibit, CCR-Sierra submitted terrain data 10 to 50 kilometers from the allotment site in accordance with Section 73.313(f) of the rules. However, the furthest part of Tanque Verde is only 19.3 kilometers from the allotment site. In such a situation, Section 73.313(g) of the rules restricts the terrain profile to points between 10 and 19.3 kilometers from the transmitter site. In this regard, we agree with Cochise Desert that using terrain profile data beyond Tanque Verde could skew any terrain variance determination and can not be used in this proceeding.

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 its engineering exhibit, CCR-Sierra has submitted data along seven radials from the proposed allotment site for Channel 253A at Corona de Tucson. In order to demonstrate a significant variance in terrain, this exhibit provides a single height above average terrain at 16.1 kilometers from the proposed allotment site for each radial. As stated earlier, 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. Section 73.313(e) requires elevation data at multiple points along each radial. CCR-Sierra has submitted no such showing demonstrating the required variation. In the absence of such a submission, Section 73.313(a) must be used to calculate FM signal strength. Finally, CCR-Sierra refers to our finding in the *Report and Order* regarding the absence of a “significant” terrain obstruction between the proposed transmitter site and Corona de Tucson. According to CCR-Sierra, this confirms the presence of “an obstruction.” It continues to be our view that any such obstruction is minor and would not prevent a 70 dBu signal to Corona de Tucson. In any event, increasing

⁷ 47 C.F.R. § 73.315(a).

the height above average terrain from 100 meters to 111 meters with a corresponding reduction in effective radiated power from 6 kilowatts to 4.85 kilowatts would clear any obstruction and obviate any issue regarding 70 dBu service to Corona de Tucson.

8. We again reject the CCR-Sierra argument that the antenna structure necessary for a Channel 267C3 allotment at Tanque Verde would be a presumed hazard to air navigation. According to CCR-Sierra, this site is “near” the Davis Monthan Air Force Base. As stated in the *Report and Order*, we presume, in a rulemaking proceeding, that the proposed facility can be constructed consistent with local zoning requirements and would gain FAA approval. Both of these presumptions are rebuttable.⁸ CCR-Sierra had not provided a showing or exhibit from an aeronautical consultant or local zoning official which puts this presumption at issue.⁹ In its Petition for Reconsideration, CCR-Sierra submitted a letter from an airspace consultant noting that the proposed antenna structure is 6.07 miles from the Davis Monthan Air Force Airport and that the Tucson Radar Approach Control would have to agree to this proposal. CCR-Sierra also notes that the FAA would have to be notified and this proposal would then be circulated to the “interested aeronautical community” prior to issuing any determination regarding this structure. According to CCR-Sierra, the FAA will require marking and lighting. The fact that the antenna structure, near an airport, would need to go through normal FAA processing and may require marking and lighting does not raise an issue regarding future FAA approval for the structure.¹⁰

9. In the *Report and Order*, we allotted Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico, to replace a first aural service and second aural service that would have been provided by Channel 279C1 at Lordsburg, New Mexico. CCR-Sierra contends that Animas is not a licensable community. Animas has sufficient indicia to qualify as a community for a broadcast station. The Commission has consistently held that the test for determining status is not a stringent one.¹¹ Even though Animas is not incorporated or a Census Designated Place, it does have a geographical identifiable population which supports a conclusion that it is a community. Animas is listed in the 2005 Rand McNally Road Atlas with a population of 200 persons. Cochise Desert has identified local businesses as well as the Animas Community Center. We recognize that Animas is located in a sparsely populated agricultural area and the post office and schools located in Animas serve individuals residing well outside of Animas. This does not negate our finding that Animas is, in fact, an identifiable community.

10. In the *Report and Order*, we also reallocated Channel 267C3 from Corona de Tucson to Tanque

⁸ See *San Clemente, California*, Memorandum Opinion and Order, 3 FCC Rcd 6728 (1988).

⁹ 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).

¹⁰ See *Ardmore, Alabama, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 16332 (MB 2002).

¹¹ See *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 3469 (MMB 1987), *affirmed*, Memorandum Opinion and Order, 2 FCC Rcd 7562 (1987); see also *Kenansville, Florida*, Memorandum Opinion and Order, 5 FCC Rcd 2663 (MMB 1990), *rev. denied*, Memorandum Opinion and Order, 10 FCC Rcd 9831 (1995); *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990).

Verde and modified the Station KKYZ license to specify Tanque Verde as the community of license. This action was pursuant to *Community of License* and Section 1.420(i) of the rules which requires, *inter alia*, that the amended allotment at the new community of license be mutually exclusive with the licensee's or permittee's present assignment.¹² 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, was modified to specify operation on Channel 267C3 at Corona de Tucson.¹³ That action is now final. Station KKYZ is no longer assigned to Channel 269A at Sierra Vista. Instead, Station KKYZ continues to operate pursuant to an "implied STA" which is subject to summary cancellation if necessary to accommodate the operation of any FM station pursuant to its authorization.¹⁴ In *Community of License*, the Commission specifically required that the proposed change in community of license be mutually exclusive with the station's existing allotment.¹⁵ As noted above, there is no longer a Channel 269A allotment at Sierra Vista. Station KKYZ is now assigned to the Channel 267C3 allotment at Corona de Tucson. Both this allotment and assignment are mutually exclusive with Channel 267C3 at Tanque Verde.

11. Tanque Verde, Corona de Tucson, Vail, Animas and Virden are all located within 320 kilometers (199 miles) of the U.S.-Mexican border. According to CCR-Sierra, the allotments at these communities would be short-spaced to Mexican allotments and stations at Sasabe, Aqua Prieta, Fmagua Prieta, Nogales and Cananea, Mexico. Consistent with normal processing procedures, 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 allotted those channels in the *Report and Order*. 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." CCR-Sierra has provided no basis to depart from this established procedure.

12. With regard to Channel 228C1 at Virden, CCR-Sierra argues that because this proposal does not conflict with the underlying proposal in this proceeding, it is, in fact, a new proposal precluded by the "freeze" on the filing of new FM allotment proposals.¹⁶ We disagree. As discussed in the *Report and Order*, we substituted Channel 279A for vacant Channel 279C1 at Lordsburg, New Mexico, and reallocated Channel 279A to Vail, Arizona. A Channel 279C1 allotment at Lordsburg would have ultimately provided

¹² 47 C.F.R. § 1.420(i).

¹³ *Sierra Vista and Corona de Tucson, Arizona*, Report and Order, 19 FCC Rcd 10997 (MB 2004).

¹⁴ See *Letter to Stations KMEM, Memphis, Missouri, and KLBA, Albia, Iowa*, reference 18000B3-DCD (MM Bur. May 26, 1995).

¹⁵ *Community of License*, 4 FCC Rcd at 4873.

¹⁶ See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rule Making, 20 FCC Rcd 11169 (2005).

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, the *Report and Order* allotted Channel 279C1 to Animas and Channel 228C1 to Virden. Generally, we will not permit applicants to “backfill” with new allotments to cure Priority (1) or (2) service loss.¹⁷ However, Cochise Desert is not required to provide backfill service because Cochise has not yet initiated operations at Lordsburg.¹⁸ In contrast, a permittee of an unbuilt station is permitted to propose a new vacant allotment which is not technically related to its proposal to offset the theoretical loss of first and second reception service resulting from the community of license modification. Thus, the staff properly considered the Animas and Virden allotments as replacement services for the Priority (1) and (2) losses that would result from the modification of the Lordsburg allotment and the resulting Cochise construction permit for a new unbuilt station at Lordsburg.

III. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by CCR-Sierra Vista IV, LLC, IS DENIED.

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

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

¹⁷ See *Sells, Wilcox and Davis-Monthan Air Force Base, Arizona*, Memorandum Opinion and Order, 23 FCC Rcd 1242 (MB 2008).

¹⁸ See *Linden, Texas, et al.*, Report and Order, 16 FCC Rcd 10853 (MMB 2001).