

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 10-64
Table of Allotments,)	RM-11598
FM Broadcast Stations.)	
(Milford, Utah))	
)	
Station KCLS(FM), Pioche, Nevada)	BPH-20091016AEO
)	
Station KPLD(FM), Kanab, Utah)	BPH-20101112AJY

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: December 7, 2011

Released: December 9, 2011

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (the “*Notice*”)¹ issued at the request of Canyon Media Group, LLC (“Canyon”), and the captioned Canyon minor change applications (the “Canyon Applications”). For the reasons explained below, we grant the Canyon Applications and the rule making proposal set forth in the *Notice*.

2. **Background.** On October 16, 2009, Canyon and Lincoln County School District (“LCSD”) initiated a “hybrid” application/rule making proceeding (“Initial Hybrid Proceeding”). The filings included a Canyon application to upgrade and change the community of license for Station KCLS(FM) (the “KCLS(FM) Application”) from Channel 269C2, Pioche, Nevada, to Channel 268C1, Leeds, Utah.² LCSD proposed to upgrade and change the community of license of noncommercial educational Station KLYX(FM) (the “KLYX(FM) Application”) from Channel 209C3, Panaca, Nevada, to Channel 209C2, Pioche, Nevada.³ Canyon petitioned and the *Notice* proposed the substitution of Channel 288C for vacant Channel 285C at Milford, Utah.⁴

¹ *Milford, Utah*, Notice of Proposed Rule Making, 25 FCC Rcd 2768 (MB 2010).

² See File No. BPH-20091016AEO. Canyon subsequently amended the technical proposal on two occasions. The KCLS(FM) Application, as amended (the “KCLS(FM) Amended Application”), specifies a Channel 268C0 facility at a different transmitter site.

³ See File No. BHPED-20091016AEN. As described in more detail below, in November 2010, the KLYX(FM) Application was severed from the Initial Hybrid Proceeding at LCSD’s request and granted independently of the remaining parts of the Initial Hybrid Proceeding (the “Modified Hybrid Proceeding”).

⁴ Canyon also requested that the staff issue an order to show cause to modify the license of Station KPLD(FM), Kanab, Utah, from Channel 266C to Channel 286C. Canyon subsequently acquired KPLD(FM) and filed the captioned application to effect this channel substitution. See File No. BPH-20101112AJY.

3. Canyon filed comments in support of the proposed channel substitution at Milford, Utah. No other comments were received.

4. **Discussion.** The allotment change proposed in the *Notice* would facilitate implementation of the Canyon Applications. In this regard, we must consider whether grant of the KCLS(FM) Amended Application complies with our Section 307(b) processing policies. In the *Second Report and Order* in the Rural Radio proceeding, the Commission modified these policies, establishing a rebuttable presumption that a proposal that would or could serve 50 percent of an urbanized area should be treated as serving such area for purposes of applying our FM allotment priorities.⁵ The KCLS(FM) Amended Application would provide 70 dBu service to 100 percent of the St. George, Utah, Urbanized Area. The KCLS(FM) Application was filed prior to the effective date of the revised Section 307(b) procedures. It is not entitled to processing under the former processing policy, however, because no construction permit has been granted or license modified in the Modified Hybrid Proceeding.⁶

5. We find that the facts and equities of this case are sufficiently similar to those which qualify for processing under the former standards and that a waiver on this basis is warranted. As previously noted, the Initial Hybrid Proceeding included the KLYX(FM) Application, which was designed to provide “backfill” service to Pioche to offset the loss of the community’s sole local service resulting from the relocation of Station KCLS(FM) to Leeds, Utah. The KLYX Application was not technically related to any of the other Initial Hybrid Proceeding proposals. Several other issues, including the need to obtain Mexican concurrence in a related licensing proceeding,⁷ prevented action on the Initial Hybrid Proceeding during most of 2010. Accordingly, in November 2010, when faced with an expiring construction permit, LCSD requested that the Commission sever the KLYX(FM) Application from the Initial Hybrid Proceeding and process it “on its own merits.”⁸ The staff promptly granted the KLYX(FM) Application and a covering license application was filed on December 16, 2010, one day prior to the expiration of the KLYX(FM) construction permit. Canyon represents that it provided both significant funding and resources during difficult winter weather conditions to facilitate the timely construction of KLYX(FM).

6. Although the granted KLYX(FM) construction permit and license are not part of the Modified Hybrid Proceeding, these licensing actions were indisputably based on Canyon’s and LCSD’s recognition that it was necessary to include a Pioche “backfill” as part of their proposed coordinated facility changes. Faced with a processing policy under which all coordinated filings are disposed of simultaneously,⁹ Canyon and LCSD had no option other than to sever the KLYX(FM) Application from the Initial Hybrid Proceeding. Moreover, the grant of the KCLS(FM) Amended Application would almost certainly not be

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 2556, 2572, ¶ 30 (“*Rural Radio*”).

⁶ *Id.* at 2576, ¶ 30; and at 2578, ¶ 39.

⁷ On October 16, 2009, the same date that Canyon filed the KCLS(FM) Application, Cochise Media Licenses, LLC, proposed a change of community for Channel 268C3, Peach Springs, Arizona, to Channel 267C2, Oatman, Arizona. However, Channel 268C3 at Peach Springs, mutually exclusive with the KCLS(FM) Amended Application, needed to be protected until the Mexican government concurred in the move to Oatman. See File No. BNP-20091016ADO; and *Peach Springs, Arizona*, Report and Order, 25 FCC Rcd 16104 (MB 2010).

⁸ See File No. BMPED-20091016AEN, Amendment of October 25, 2010, at Exhibit 1.

⁹ See 47 C.F.R. § 73.3517(e). See also *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5282, ¶ 14 (1999) (“Applications will be processed together and, if grantable, will be granted simultaneously”).

possible without the timely construction and continued operations of KLYX(FM). On these narrow and unusual facts, we find that a waiver of the revised processing rules is warranted. Accordingly, we will treat the KCLS Amended Application as a proposal to provide a first local service to Leeds, Utah. Grant of the KCLS(FM) Application would result in a preferential arrangement of allotments.¹⁰ Pioche, Nevada, would continue to be served by FM Station KLYX, Channel 209C2. We therefore find that the proposal contained in the *Notice*, in conjunction with the proposals set forth in the Canyon Applications, would serve the public interest.

7. **Conclusion.** 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 January 23, 2012, 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>
Milford, Utah	288C

Reference Coordinates: 38-31-11 NL and 113-17-07 WL, at a site 27.6 km (17.2 miles) northwest of Milford.

8. IT IS FURTHER ORDERED, That the Form 301 minor change application of Canyon Media Group, LLC, for Station KPLD(FM), Kanab, Utah, to operate on FM Channel 286C rather than FM Channel 266C, File No. BPH-20101112AJY, IS GRANTED.

9. IT IS FURTHER ORDERED, That the Form 301 minor change application of Canyon Media Group, LLC, for Station KCLS(FM), to upgrade and change the station's community of license from Channel 269C2, Pioche, Nevada, to Channel 268C0, Leeds, Utah, File No. BPH-20091016AEO, IS GRANTED.

10. A copy of this *Report and Order* will be sent by Certified Mail, Return Receipt Requested to Brendan Holland, Esq, Davis Wright Tremaine LLP, 1919 Pennsylvania Aveue, N.W., Suite 200, Washington, DC 20006 (Counsel for Canyon Media Group, LLC).

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

12. 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).

13. A filing window period for Channel 288C for Milford, Utah, 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*.

¹⁰ 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). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC Rcd 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR2d 448 (1983).

14. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
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