

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 89-91
Table of Allotments,)	
TV Broadcast Stations)	RM-6659
(Billings and Lewistown,)	
Montana))	
)	

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

Adopted: March 8, 1996

Released: July 26, 1996

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a Petition for Reconsideration filed by Comanche Enterprises ("Comanche") of the Report and Order ("R&O") in this proceeding, 6 FCC Rcd 3632 (1991), which denied Comanche's petition seeking deletion of vacant Channel 13 at Lewistown, Montana and allotment of Channel 13 to Billings, Montana. Big Horn Communications, Inc. ("Big Horn") filed an Opposition to the Petition, and Comanche filed a Reply to the Opposition. For the reasons stated below, we deny the Petition for Reconsideration.

I. Background

2. In the R&O, we declined to delete vacant Channel 13 at Lewistown and allot Channel 13 to Billings. We noted that Big Horn, which opposed the reallocation of Channel 13 to Billings, had filed an application for a construction permit ("CP") for Channel 13 at Lewistown and had indicated that it would promptly construct and operate a television station there.¹ The R&O cited Commission policy not to reallocate a channel in which interest has been expressed absent a sufficient reason, and it found that Comanche had failed to provide sufficient reason for not following the policy in this case. However, we also noted that, should there be undue delay

¹ Big Horn's application (File No. BPCT-890613KF) is pending. Comanche filed a Petition to Deny Big Horn's application, and that petition will be the subject of a separate Memorandum Opinion and Order.

in activating the channel in Lewistown, we would consider a further petition to remove the channel at Lewistown to accommodate an additional service at Billings.

II. Petition for Reconsideration

3. As an initial matter, we note that several of Comanche's arguments relate to Big Horn's ownership of low power television (LPTV) station K17AD, Lewistown. However, after the Petition for Reconsideration and related pleadings in this proceeding were filed, Big Horn terminated its Lewistown LPTV operation, making most of these arguments moot. Nevertheless, certain of Comanche's arguments are based on Big Horn's motivation in applying for the construction permit when it already held the LPTV license. To the extent that Big Horn's prior ownership of the LPTV station remains germane to this proceeding, we shall consider it in our analysis. We also note that the LPTV station carried the programming of station KOUS-TV, Billings, and that the station which Big Horn seeks to construct would be a satellite of the Billings station.

4. Comanche argues that, in denying its proposal to reallocate Channel 13 to Billings, the Commission subordinated the public interest to Big Horn's private interest. However, as noted above, the Commission has long had a policy of not reallocating a channel in which interest has been expressed, absent a sufficient or "compelling" reason.² This policy

reflects the Commission's view that one critical aspect of implementing the mandate of Section 307(b) of the Communications Act is to provide an efficient allotment system that affords prospective applicants reasonable certainty and administrative finality in seeking to initiate service. In short, the "fair distribution" of service analysis which underlay the original allotment decision should not be disturbed where an active interest in providing service exists.³

This longstanding policy is based on important public interest considerations, and the fact that Big Horn may benefit from following this policy does not negate the public interest benefit of the activation of a vacant allotment that was determined to be in the public interest.

5. Comanche has not demonstrated a compelling reason to depart from precedent by reallocating a channel that someone has expressed a clear interest in utilizing. Grant of Comanche's petition would allot to Billings its fourth television service. However, we do not find the provision of a fourth television service to be compelling. Indeed, the Commission has

² See, e.g., Montrose and Scranton, Pennsylvania, 5 FCC Rcd 6305, 6306 (1990); Fond du Lac and Sheboygan, Wisconsin, 55 RR 2d 592, 594 (Pol. & Rules Div. 1984); Snow Hill and Kinston, North Carolina, 55 FCC 2d 769 (1975); Red Oak, Iowa, 46 FCC 2d 344, 345 (1974).

³ Montrose and Scranton, Pennsylvania, 5 FCC Rcd at 6306.

stated that the provision even of first local service, standing alone, is not a compelling reason to reallocate a television channel where an interest has already been expressed in its retention at the existing community.⁴

6. However, Comanche claims that Big Horn's actual motive in filing its application was not to provide better service to Lewistown, but to prevent the reallocation of Channel 13. Specifically, Comanche argues that, as an alternative to activating Channel 13 in Lewistown, Big Horn could have increased the power of its LPTV station to achieve additional coverage and improve service to the community.⁵ Comanche also cites Big Horn's proposal to provide the same programming on Channel 13 as it was broadcasting on its Lewistown LPTV station as an indication of its intention to block the reallocation.

7. Except in instances when the Commission's processes are being abused against the public interest, as when an application is "filed purely for 'tactical purposes' [that] constitut[e] a compelling reason for not following the policy [of not reallocating a channel where there is an expression of interest in its retention],"⁶ the motivations of the parties are generally not relevant to an allotment proceeding.⁷ In this regard, we find that Comanche has not made an adequate showing of bad faith on the part of Big Horn but has presented only speculation. There is no indication that Big Horn's application was filed purely to obstruct the proposed reallocation of Channel 13.

8. Not altering the power of the LPTV station does not indicate bad faith on Big Horn's part. We have not in the past considered the availability of LPTV stations as a substitute for full-power stations in allotment proceedings,⁸ and Comanche has not demonstrated why we should do so now. All broadcast television stations must serve the needs and interests of their communities of license. LPTV stations do not have the same public service obligations. Also,

⁴ Id.

⁵ Comanche also argues that grant of Big Horn's application would essentially represent a reallocation of the channel to Billings in violation of the Commission's procedural rules, since the station would be a satellite of KOUS-TV, Billings and might not therefore provide programming to serve Lewistown. However, we long ago abandoned the de facto reallocation policy upon which Comanche apparently relies. Report and Order in BC Docket No. 82-230, 93 FCC 2d 436 (1983).

⁶ Montrose and Scranton, Pennsylvania, 4 FCC Rcd 7799, 7800, n. 1 (Policy and Rules Div. 1989).

⁷ See Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama, 6 FCC Rcd 6580, 6581 (Chief, Mass Media Bur. 1991), rev. pending.

⁸ See Farmington and Gallup, New Mexico, 7 FCC Rcd 2382, 2383 n. 5 (Alloc. Branch 1992).

LPTV service is secondary to full-power television service, subject to destructive interference.⁹ As a result, LPTV service to the residents of Lewistown could have been less reliable, and we decline to equate it with service from a full-power station assured of interference protection.

9. Neither is Big Horn's proposal to operate Channel 13 as a satellite a sufficient reason for deviating from the Commission's longstanding policy. Under Section 307(b), the Commission does not examine the nature of the programming to be offered by a proposed station. Such concerns are best raised and resolved in the licensing process.¹⁰ For the same reason, Comanche's final assertion, that denial of its Petition would further concentrate the media resources in the Billings area while grant of its Petition would promote competition, is not relevant to this proceeding. As we have said, "[a] comparative rule making proceeding involves a technical and demographic analysis of the competing proposals in the context of Section 307(b) of the Communications Act. Individual qualification issues are more properly considered in a licensing context."¹¹

III. Conclusion

10. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Comanche Enterprises IS DENIED.

11. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

⁹ Report and Order in BC Docket No. 78-253, 51 RR 2d 476, 488 (1982).

¹⁰ Comanche has raised the satellite issue in its Petition to Deny Big Horn's CP application.

¹¹ Caldwell, College Station and Gause, Texas, 10 FCC Rcd 7285, 7288 (Alloc. Branch 1995).