

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

MM Docket No. 95-85

In the Matter of

Amendment of Section 73.202(b), RM-8518  
Table of Allotments,  
FM Broadcast Stations.  
(Copeland, Kansas)

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: December 7, 1995; Released: January 19, 1996

By the Chief, Allocations Branch:

1. At the request of Greater Plains Christian Radio, Inc, the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 6605, (1995), proposing the allotment of Channel 280C1 to Copeland, Kansas, as the community's third local FM service and reservation of the channel for noncommercial educational use. Petitioner filed comments reiterating its intention to apply for Channel 280C1, if allotted to Copeland.<sup>1</sup> Dana J. Puopolo ("Puopolo") filed a counterproposal.<sup>2</sup> Petitioner and Puopolo filed reply comments.

2. As stated in the *Notice*, noncommercial educational stations generally operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments or potential interference to operation on VHF Television Channel 6. Here, potential interference to Station

KBSD-TV, Ensign, Kansas, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use. An engineering analysis has confirmed that there are no Class A channels available in the noncommercial educational band that would not cause objectionable interference to Station KBSD-TV.

3. We believe the public interest would be served by allotting Channel \*280C1 at Copeland, Kansas, and reserving it for noncommercial educational use. The allotment of Channel \*280C1 at Copeland would provide the community with its third local FM service. Channel \*280C1 can be allotted to Copeland in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.<sup>3</sup>

4. Accordingly, pursuant to the 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 March 4, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Copeland, Kansas	251C1, <sup>4</sup> 256C1, *280C1

5. The window period for filing applications will open on March 4, 1996, and close on March 19, 1996.

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

7. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

<sup>1</sup> In response to the *Notice*, petitioner states it is eligible to acquire a second FM station at Copeland. Petitioner's engineering statement indicates that there are a total of fifteen AM and non-reserve band FM broadcast stations that make up the Copeland, Kansas, radio market [including petitioner's current noncommercial station, KJIL(FM)]. Petitioner contends that since there are more than 14 stations in the Copeland, Kansas, "market", Section 73.3555(a)(1)(i) of the Commission's Rules is not implicated. The Commission has stated in its *Revision of Radio Rules and Policies, Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 7 FCC Rcd 6387 (1992), that a party may own up to 2 AM and 2 FM commercial stations in radio markets with 15 or more commercial radio stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest. While petitioner has made a showing that Section 73.3555(a)(1)(i) of the Commission's Rules does not apply, compliance with audience share (Section 73.3555(a)(1)(ii) of the Commission's Rules) will be determined at the application stage.

<sup>2</sup> Puopolo's counterproposal was found to be unacceptable and not placed on public notice. Puopolo requested the allotment of Channel 280C1 to Ingalls, Kansas. In order to accommodate the

new allotment at Ingalls, he also requested the allotment of Channel 224C1 to Copeland. Our engineering analysis found that the proposed allotment of Channel 224C1 to Copeland was short-spaced to the licensed site of Station KKBS(FM), Channel 224C3, Guymon, Oklahoma. Subsequently, Puopolo filed reply comments stating that Channel 280C1 and Channel 242C1 could be allotted to Copeland and Ingalls, Kansas, respectively. However, we find that Puopolo's latest proposal is late-filed and is not considered a counterproposal. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See *Implementation of BC Docket 89-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931 (1990). In this case, there is no mutually exclusivity between the allotment of Channel 280C1 to Copeland and the allotment Channel 242C1 to Ingalls, Kansas. In light of our finding, we will consider Puopolo's request as a new petition for rule making and issue a separate Notice of Proposed Rule Making.

<sup>3</sup> The coordinates for Channel \*280C1 at Copeland are North Latitude 37-32-31 and West Longitude 100-37-45.

<sup>4</sup> In the *Notice*, we incorrectly listed Channel 251 at Copeland as a Class C station, however, it should have been listed as a Class C1 facility.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau