

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

MM Docket No. 95-98

In the Matter of

Amendment of Section 73.202(b) RM-8603
Table of Allotments,
FM Broadcast Stations.
(Cheyenne and Saratoga, Wyoming)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 15, 1995; Released: January 26, 1996

By the Chief, Allocations Branch:

1. At the request of Rule Communications ("Rule") and KRAE, Inc. ("KRAE") (jointly referred to as "petitioners"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 6722 (1995), requesting the allotment of Channel 260A at Cheyenne, Wyoming, as potentially the community's fifth local FM transmission service. To accommodate the allotment, petitioners request the deletion of vacant Channel 260C at Saratoga, Wyoming, or alternatively, the substitution of Channel 277C for vacant Channel 260C at Saratoga.¹ Petitioners also request that if Channel 260A is allotted, Rule be allowed to amend its pending application to specify operation on Channel 260A in lieu of Channel 285A. Petitioners filed comments in support of the proposal and Rule reaffirmed its intention to apply for Channel 260A, if allotted with cut-off protection. No other comments were received.

2. As indicated in the *Notice*, Rule and KRAE are mutually exclusive applicants for Channel 285A at Cheyenne, Wyoming, and the allotment of Channel 260A would accommodate both applicants' request for a Class A channel in Cheyenne and avoid the need for a comparative hearing. Because of developments related to our comparative licensing procedures, we are currently unable to designate these applications for a comparative hearing or otherwise resolve these mutually exclusive applications. *See Bechtel v. Federal Communications Commission*, 10 F.3d 875 (D.C. Cir. 1993). Therefore, the *Notice* also proposed to allow Rule to amend its application to specify operation on Channel 260A and retain its cut-off protection. In the event there were additional expressions of interest, the *Notice* indicated that there was an additional Class A channel available at Cheyenne and a Class C channel at Saratoga.

3. We believe the public interest would be served by allotting Channel 260A at Cheyenne, Wyoming, since potentially it would provide the community's with its fifth local FM transmission service and avoid the need for a comparative hearing consistent with our precedent. *See*,

e.g., *Copeland, Kansas*, 5 FCC Rcd 7682 (1990); *Roseburg, Oregon*, 6 FCC Rcd 4369 (1991); and *Albion, Nebraska*, 10 FCC Rcd 3183 (1995), *rev. denied*, 10 FCC Rcd 11927 (1995). An engineering analysis has determined that Channel 260A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, provided Channel 260C is deleted at Saratoga.² Since no party has expressed an interest in Channel 260C at Saratoga, either in this proceeding or through filing an application, we will delete the vacant allotment. *See Northport, Alabama and Macon, Mississippi*, 8 FCC Rcd 2161; and *Oakdale and Campiti, Louisiana*, 7 FCC Rcd 7600 (1992). Furthermore, in view of the fact there are no other timely filed expressions of interest for a Class A channel at Cheyenne, we will allow Rule to amend its application (BPH-930923ME) to specify operation on Channel 260A in lieu of Channel 285A and retain cut-off protection. *See, e.g.*, *Copeland, Kansas, supra*; *Roseburg, Oregon, supra*; and *Albion, Nebraska, supra*.

4. Accordingly, pursuant to the authority found 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 11, 1996, 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:

City	Channel No.
Cheyenne, Wyoming	250C, 260A, 264C1, 285A, 292C3
Saratoga, Wyoming	--

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

6. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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

¹ The *Notice* stated that in the event no expression of interest in retaining Channel 260C at Saratoga was filed, the allotment would be deleted.

² The coordinates for Channel 260A at Cheyenne are North Latitude 41-08-18 and West Longitude 104-48-48.