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

SEP 24 2 42 PM '92

MM Docket No. 92-56

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-7551
Table of Allotments,
FM Broadcast Stations.
(Bay City and Edna, Texas)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: August 28, 1992; Released: September 24, 1992

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration filed by Roy E. Henderson ("Henderson") directed to the *Report and Order* in this proceeding. 7 FCC Rcd 4135 (1992). The *Report and Order* upgraded Station KXGJ, Channel 241C2, Bay City, Texas, to specify operation on Channel 269C1, and substituted Channel 241A for Channel 269A at Edna, Texas. For the reasons discussed below, we deny the Petition for Reconsideration.

BACKGROUND

2. The *Notice of Proposed Rule Making* in this proceeding proposed the substitution of Channel 269C1 for Channel 241C2 at Bay City, and modification of the construction permit of Station KXGJ to specify operation on Channel 269C1. 7 FCC Rcd 2106 (1992). In order to accommodate this upgrade, the *Notice* also proposed the substitution of Channel 241A for Channel 269A at Edna, Texas. In response to the *Notice,* Ammerman Enterprises, Inc., permittee of Station KXGJ, filed comments and reply comments supporting the proposal. Henderson also filed comments and reply comments. In his comments, Henderson noted that in MM Docket No. 90-90, he had filed a counterproposal involving multiple channel substitutions looking toward a Channel 285C1 upgrade for Station KMIA, Rosenberg, Texas. Included among the proposed channel substitutions were the substitution of Channel 241A for Channel 269A at Edna, and the substitution of Channel 269C2 for Channel 241C2 at Bay City. MM Docket No. 90-90 remains pending. With respect to this proceeding, Henderson contended that his counterproposal in MM Docket No. 90-90 should have been referenced in the *Notice,* and that MM Docket No. 90-90 should be resolved in conjunction with this proceeding.

3. During this proceeding, we also received a letter from Congressman Jack Fields. In his letter, Congressman Fields expressed concern on the delay in resolving a related proceeding in MM Docket No. 89-459, in which Henderson also filed a counterproposal, as well as Docket No. 90-90. In addition, Congressman Fields noted that the proposed substitution of Channel 241A for Channel 269A at Edna, Texas, in this proceeding had been earlier suggested by Henderson in MM Docket No. 90-90. In a separate letter response to Congressman Fields's inquiry, the Chief of the Mass Media Bureau stated that the proposed channel substitution at Edna and upgrade at Bay City were necessary to grant the maximum number of proposals in MM Docket No. 89-459. The letter stated that at the conclusion of this proceeding, MM Docket No. 89-459 would be resolved on an expedited basis. The letter also noted that an upgrade at Bay City and channel substitution at Edna would not prejudice the resolution of MM Docket No. 90-90 in any manner.[1]

4. The *Report and Order* upgraded Station KXGJ to specify operation on Channel 269C1, and substituted Channel 241A for Channel 269A at Edna. In the *Report and Order,* we rejected any contention that we should delay action in this proceeding pending resolution of MM Docket No. 90-90. We specifically noted that resolving this proceeding enables us to resolve the earlier proceeding in MM Docket No. 89-459. We also noted our awareness that Henderson filed a counterproposal in MM Docket No. 90-90 involving the substitution of Channel 269C2 for Channel 241C2 at Bay City and Channel 241A for Channel 269A at Edna. In this connection, we stated that our action in this proceeding does not prejudice the Henderson counterproposal in MM Docket No. 90-90, and that Henderson's counterproposal has no decisional significance in this proceeding.

5. In his Petition for Reconsideration, Henderson states that the letter from Congressman Fields was filed by the May 18, 1992, comment date in this proceeding and was served on the other party in this proceeding. As such, Henderson contends that the letter should be considered as timely filed comments in MM Docket No. 92-56 and requests that the *Report and Order* be reconsidered with "full consideration and recognition" of the letter from Congressman Fields.

6. The Petition for Reconsideration is without merit. The letter from Congressman Fields did not address the merits of either the proposed upgrade for Station KXGJ or the proposed channel substitution at Edna. It merely expressed concern on the delay in resolving MM Docket No. 89-459 and MM Docket No. 90-90, and requested Bureau comment on why the *Notice* in this proceeding did not refer to the fact that the proposed Edna channel substitution had been earlier suggested in MM Docket No. 90-90. The Bureau response to Congressman Fields's letter addressed both of these concerns. These concerns were also addressed in the *Report and Order* in response to the comments filed by Henderson. We continue to believe that our practice of addressing the concerns expressed by Congressional inquiries by separate correspondence is conducive to the efficient transaction of Commission business. Furthermore, our action did not affect the outcome of MM Docket No. 92-56. Therefore, we deny the Petition for Reconsideration.

7. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Roy E. Henderson IS DENIED.

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[1] *See* Letter from Chief, Mass Media Bureau to Congressman Jack Fields (June 12, 1992).

8. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

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