

ORIGINAL

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Bainbridge, Georgia))

MM Docket No. 96-253
RM-8962

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Mass Media Bureau

REPLY

Paxson Communications Corporation ("Paxson"), licensee of Radio Station WXSX(FM), Quincy, Florida,^{1/} by its attorneys, and pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its Reply to the Opposition to Petition for Reconsideration filed by Chattahoochee Broadcast Associates ("CBA")^{2/} in the above-captioned proceeding.^{3/}

I. Introduction.

CBA fails to demonstrate that the *Bainbridge Order* was properly decided. Paxson showed in its Petition for Reconsideration that the Allocations Branch (the "Staff") erred

^{1/} On June 30, 1997, the Commission granted an application for *pro forma* assignment of the license of WXSX(FM) from Paxson Tallahassee License, Inc. to Paxson Communications Corporation (FCC File No. BALH-970623HK). This assignment was consummated on July 17, 1997. By virtue of this *pro forma* assignment, Paxson succeeded to the interests of Paxson Tallahassee License, Inc. in this proceeding.

^{2/} CBA's Opposition was filed with the Commission on November 20, 1997 and served by mail on counsel for Paxson. This Reply is timely filed under Sections 1.4 and 1.429(g) of the Commission's Rules.

^{3/} See *Bainbridge, Georgia*, DA No. 97-1888, MM Docket No. 96-253, 1997 FCC LEXIS 4822 (Sept. 5, 1997) ("*Bainbridge Order*").

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when it refused to consider alternate allotments that would have resolved the conflict between CBA's proposal to allot Channel 270A to Bainbridge, Georgia, and Paxson's application for a minor change to WXS(FM)'s facilities. The Staff departed from established policy when it failed to undertake its own engineering analysis of alternate allotments for Bainbridge. In addition, the Staff erroneously dismissed a late-filed counterproposal despite the fact that good cause existed to accept the proposal. Reconsideration therefore is plainly warranted.

II. The Staff's Action in the *Bainbridge Order* Violated Commission Policy.

It is established policy that the FCC's staff shall

attempt to resolve conflicts between a rulemaking petition and a later-filed FM application . . . by allotting an alternate channel for that proposed in the petition, whenever it is possible to do so without prejudice to a timely filed FM application or rulemaking petition.

Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, Memorandum Opinion and Order, 8 FCC Rcd 4743, 4745 n.12 (1993)

("Conflicts Order"); see also *Pinewood, South Carolina*, 5 FCC Rcd 7609, 7611 n.5 (1990)

("The staff, on its own initiative, typically investigates and implements channel substitutions to resolve allotment conflicts on a routine basis."). There is no indication in the *Bainbridge Order* that the Staff undertook such an analysis. As CBA acknowledges,^{4/} had the Staff done so, it may have identified a substitute channel or alternate site that would have resolved the conflict. The Staff's error in failing to undertake its own engineering analysis warrants reconsideration of its decision.

^{4/} See Opposition at 2.

III. Good Cause Existed for Considering the Scott Proposal.

Contrary to CBA's assertions, the Staff may accept a late-filed counterproposal if good cause is shown for such acceptance.^{5/} In assessing whether good cause exists, the Staff must consider both "the reason for the lateness and the significance of the information contained in the late-filing."^{6/} In the instant case, it is clear that good cause existed for the Staff to accept and consider the rulemaking proposal filed by Clyde Scott, Jr. (the "Scott Proposal"). As Paxson explained in its Petition for Reconsideration, the untimeliness of the filing of the Scott Proposal was the result of highly unique circumstances. The Staff's decision in *Cordele, Georgia*, DA No. 97-1428, MM Docket No. 93-170, 1997 FCC LEXIS 3629 (the "*Cordele Order*") freed additional channel allotments that could be used to resolve the conflict between CBA's proposal and Paxson's application. However, because the *Cordele Order* was not issued until July of 1997, several months after the comment period in the instant proceeding closed, it was impossible to submit a timely counterproposal containing these alternate allotments. Given these circumstances and the significant public interest benefit in resolving the conflict between CBA's allotment proposal and Paxson's minor change application, the Staff should have considered the Scott Proposal.

^{5/} *Ocilla, Georgia*, Memorandum Opinion and Order, 3 FCC Rcd 4765, 4765 (1988).

^{6/} *Id.*

IV. Conclusion.

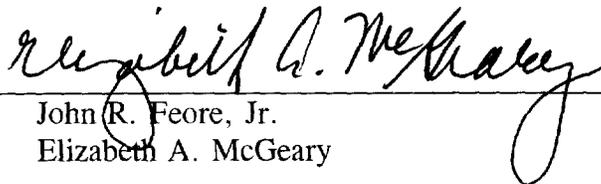
The *Bainbridge Order* contravenes Commission policy on resolution of conflicts between rulemaking petitions and applications. Consistent with the policy set forth in the *Conflicts Order* and its processing of numerous other allotment proposals, the Staff should have undertaken its own analysis of alternate allotments and sites that would have accommodated CBA's proposal and Paxson's minor change application. The Staff also erred in dismissing the Scott Proposal as an untimely counterproposal. The timing of the *Cordele Order* and resolution of the rulemaking/application conflict in this proceeding provided good cause to consider the Scott Proposal.

Based upon the foregoing, Paxson respectfully urges the Staff to reconsider the *Bainbridge Order*.

Respectfully submitted,

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December 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Reply" was sent on this 3rd day of December, 1997, via first-class United States mail, postage pre-paid, to the following:

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