

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 )  
(Wright City, Oklahoma) )

MB Docket No. 14-257  
RM- 11743

Accepted / Filed

FEB -9 2015

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division, Media Bureau

Federal Communications Commission  
Office of the Secretary

~~DOCKET FILE COPY OF~~ COMMENTS

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Liberman Broadcasting of Dallas Licensee LLC ("LBDL"), licensee of Station KZMP-FM, Pilot Point, Texas, by its counsel, hereby submits the following comments in response to the *Notice of Proposed Rule Making ("NPRM")* in the above referenced proceeding. LBDL is a party to a related rule making proceeding involving a pending Petition for Rule Making to allot Channel 286A to Grant, Oklahoma (the "Grant Petition") filed by Katherine Pyeatt ("Pyeatt").<sup>1</sup> LBDL will demonstrate how the two proceedings are related and respectfully requests that the Commission take no action on the Bogata proposal until the Grant, Oklahoma proceeding is resolved.<sup>2</sup> In support hereof, LBDL states as follows:

<sup>1</sup> LBDL filed an Opposition to the Grant Petition. See, Opposition to Petition for Rule Making, filed December 8, 2014 (the "Pyeatt Opposition"). Although the Grant Petition was filed prior to the Wright City, Oklahoma Petition for Rule Making, the Media Bureau has not yet issued an *NPRM* or taken any other action with respect to the Grant Petition.

<sup>2</sup> LBDL will also be filing Comments with respect to the *NPRM* in MB Docket No. 14-236, Bogata, Texas, which is related for the same reasons. Both the Wright City, Oklahoma and the Bogata, Texas allotment proposals were advanced by Charles Crawford.

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1. The Pyeatt proposal to allot Channel 286A to Grant, Oklahoma conflicts with LBDL's prior-filed application to implement an upgrade of facilities on Channel 285C0 for Station KZMP-FM (File No. BPH-20141028AAK) (the "KZMP Application").<sup>3</sup> Ms. Pyeatt has filed an informal objection to the KZMP Application, which LBDL has opposed.<sup>4</sup> Among other shortcomings, Pyeatt's proposal fails to protect the authorized upgrade of Station KZMP-FM to Class C0. Although LBDL believes that the Grant Petition will be dismissed on that basis and the KZMP Application will be granted, since those actions have not yet taken place, LBDL believes it is prudent to suggest that the Wright City proposal be considered as part of an alternative solution.

2. In the recent case of Station WCAI(FM), Woods Hole, Massachusetts, the Chief of the Audio Division stated "we treat any application filed on the first business day after the date on which a competing construction permit expires as mutually exclusive with an earlier-filed 'replacement' modification application."<sup>5</sup> In such cases, we expect the applicants to use engineering solutions and good faith negotiation to resolve their mutual exclusivity."<sup>6</sup> This policy was first set forth in *Eastern Mennonite University*, and Pyeatt argues that under this policy the Grant Petition and her application (File No. BNPH-20141029ACJ) must be considered mutually exclusive with the earlier-filed KZMP-FM replacement application. If the Media Bureau decides to treat these proposals as mutually exclusive, then the vacant channel at issue in the proposal herein, as well as Petitioner's concurrent Bogata proposal, should be considered as

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<sup>3</sup> The KZMP Application requests a replacement for an expiring construction permit authorizing implementation of the same upgrade of Station KZMP-FM.

<sup>4</sup> See, Opposition to Informal Objection, in re KZMP-FM, Pilot Point, Texas, File No. BPH-20141028AAK, filed November 20, 2014.

<sup>5</sup> In re: *WCAI(FM), Woods Hole, Massachusetts*, letter of Peter H. Doyle, released January 6, 2015, DA 15-8, p.3, ("*Woods Hole*"), citing *Board of Trustees of Eastern Mennonite University ("Eastern Mennonite University")*, 29 FCC Rcd 5925, 5928 (2014).

<sup>6</sup> Citing *Streamlining Radio Technical Rules*, First Report and Order, 14 FCC Rcd 5272, 5273 n.2 (1999) (stating that mutually exclusive applications must be disposed of through "technical amendment, settlement between the applicants, auction or other means"); see generally 47 USC § 309(j)(6)(E).

potential parts of an overall solution to the LBDL/Pyeatt conflict and thus effectively mutually exclusive with Pyeatt's proposal.

3. The symbiotic relationship between the Wright City and Bogata Petitions and the Pyeatt Petition is inescapable. More specifically, Station KZMP-FM filed its application for Channel 285C0 on October 28, 2014. On October 29, 2014, Pyeatt filed the conflicting Petition for Rule Making to allot Channel 286A to Grant, Oklahoma and an application for that facility. LBDL immediately undertook a study of potentially available channels that could be used to resolve the conflict posed by Pyeatt's proposal. Two such channels were identified – Channels 295A and 247A.<sup>7</sup> On October 31, 2014, however, Charles Crawford filed the instant Petition for Rule Making to allot Channel 295A to Wright City, Oklahoma. In addition, on the next business day, November 3, 2014, the same Charles Crawford filed a Petition for Rule Making to allot Channel 247A to Bogata, Texas.

4. In its Pyeatt Opposition, LBDL described this remarkable sequence of three filings in a period of less than a week. Pyeatt responded by stating that “[w]hile I fully acknowledge that Mr. Crawford and I share a business address and that on occasion we share information about Commission rules, practices and procedures, I am not responsible for any petitions for rule making which he may have filed.”<sup>8</sup> Whether or not Pyeatt had any responsibility for the filing of the Crawford petitions, those filings could not have been a coincidence. Indeed, if Charles Crawford was interested in establishing new FM outlets in Wright City or Bogata, he could have filed allotment petitions for the same channels at any time over the past several years. Rather, it seems clear that the timing of the filings was carefully planned to complement the Pyeatt filing, box in KZMP-FM, and avoid the sort of settlement the

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<sup>7</sup> See attached channel studies in Exhibit 1.

<sup>8</sup> See Declaration of Katherine Pyeatt attached to Reply to Oppositions dated December 31, 2014 in the Grant, Oklahoma rule making proceeding.

Commission suggests in the *Eastern Mennonite University* case. As Joseph M. Davis of Chesapeake RF Consultants, LLC stated in his Engineering Statement,<sup>9</sup>

“Upon receipt of a copy of Pyeatt’s PRM on October 30, 2014, a channel search was conducted for a suitable alternative Class A channel that could be allotted to Grant, OK in lieu of Channel 286A. Identification of an alternate channel for Grant, OK would allow both proposals (LBDL and Pyeatt) to proceed without conflict. The channel study showed that not one, but two alternate channels existed that would be fully-spaced and within the 16.1 km principal community contour distance from Grant, OK. Either Channel 295A or Channel 247A could easily serve as an alternative to Channel 286A. However within days of Pyeatt’s Channel 286A PRM being filed on October 29, 2014, additional petitions were subsequently filed for these exact two alternate channels for use at nearby communities....Those filings assured the preclusion of any alternate channels for Grant, OK.”

5. LBDL is not aware of any other parties, besides Charles Crawford, who have expressed an interest in filing an application for the Wright City, Oklahoma, channel. In these circumstances, LBDL respectfully requests that the Bureau delay action on the pending Wright City proposal to allot Channel 295A until it disposes of the Grant Petition. Deferring action will preserve the possibility -- in the event the KZMP Application and the Grant Petition actually are treated as conflicting proposals -- of resolving the distribution of channels pursuant to the Bureau’s dictate, using good faith negotiations. LBDL submits that the instant proposal, along with the later-filed Bogata proposal and the Pyeatt Petition, should not be treated as a free-standing bid to provide service to Wright City. To the contrary, it is part of a single, coordinated

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<sup>9</sup> See Opposition to Informal Objection to the KZMP Application at Exhibit 3.

plan to lock up three channels and frustrate LBDL's application to implement the upgrade of Station KZMP-FM, and must be treated as such.

Respectfully submitted,

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LICENSEE LLC

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February 9, 2015

Its Counsel

**EXHIBIT 1**

Grant247r\_Channel\_Study

REFERENCE 33 55 18.0 N. CLASS = A DISPLAY DATES  
 02-03-15 95 25 37.0 W. Current Spacings to 3rd Adj. DATA  
 02-03-15 SEARCH  
 ----- Channel 247 - 97.3 MHz -----

Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
1656651% APP	247A	Bogata	TX	164.8	42.05	115.0	-73.0
33 33 21.0	95 18 28.1	CX	6.000 kw	100 M			
Charles E. Crawford BNP20141103ABS							
1656962% RSV-A	247A	Bogata	TX	164.8	42.05	115.0	-73.0
33 33 21.0	95 18 28.0		6.000 kw	100 M			
Charles E. Crawford							
R16637% ADD	247A	Bogata	TX	164.8	42.05	115.0	-73.0
33 33 21.0	95 18 28.0		6.000 kw	100 M			
Charles Crawford							
KYAL-FM LIC	246C	Muskogee	OK	1.9	165.56	165.0	
0.56							
35 24 48.0	95 21 55.0	CX	100.000 kw	600 M			
Kmmmy, Inc. BLH20080724ABI							
KLAK LIC	248C2	Tom Bean	TX	242.5	106.66	106.0	0.7
33 28 30.0	96 26 45.0	CX	32.000 kw	188 M			
Nm License, Llc BLH20060124AFV							
KBEL-FM LIC	244C3	Idabel	OK	94.4	56.36	42.0	14.4
33 52 54.0	94 49 10.0	CN	25.000 kw	91 M			
Brute Force Radio Llc BLH19950110KB							
KEGL LIC	246C	Fort Worth	TX	224.5	206.10	165.0	41.1
32 35 19.0	96 58 05.0	C	100.000 kw	508 M			
Citicasters Licenses, Inc. BMLH20081020AOC							
KALK LIC-N	249C3	Winfield	TX	166.1	84.32	42.0	42.3
33 11 01.0	95 12 32.0	NCN	22.500 kw	100 M			
East Texas Broadcasting, I BLH19920813KC							
KZBB LIC	250C	Poteau	OK	28.0	144.89	95.0	49.9
35 04 19.0	94 40 46.0	CN	100.000 kw	610 M			
Capstar Tx Llc BLH6297							
AL7143 RSV-A	247C2	Waskom	TX	135.3	221.57	166.0	55.6
32 29 36.0	93 45 55.0		50.000 kw	150 M			
RM11232							
KQHN LIC	247C2	Waskom	TX	135.3	221.57	166.0	55.6
32 29 36.0	93 45 55.0	CX	42.000 kw	163 M			
Cumulus Licensing Llc BLH20060109AAQ							
KSCN LIC-N	245C3	Pittsburg	TX	161.9	106.54	42.0	64.5
33 00 31.0	95 04 14.0	NC	14.000 kw	113 M			
East Texas Broadcasting, I BLH20010730ABF							

% = Station fails 73.215.  
 RSV-R = reserved - needs protection, RSV-A = allocation.

Grant295r\_Channel\_Study

REFERENCE 33 55 45.0 N. CLASS = A DISPLAY DATES  
 02-03-15 DATA  
 95 31 39.0 W. Current Spacings to 3rd Adj. SEARCH  
 02-03-15  
 ----- Channel 295 - 106.9 MHz

Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
1656124% APP 34 04 44.9	295A 94 51 15.8	Wright City CX	OK 6.000 kw	74.8 100 M	64.37	115.0	-50.6
Charles E. Crawford BNP20141031ABD							
R16637% ADD 34 04 44.0	295A 94 51 15.0	Wright City	OK 6.000 kw	74.8 100 M	64.38	115.0	-50.6
Charles Crawford							
1656770% RSV-A 34 04 44.0	295A 94 51 15.0	Wright City	OK 6.000 kw	74.8 100 M	64.38	115.0	-50.6
Charles E. Crawford							
0.52 KHTT	LIC 295C0	Muskogee	OK	354.3	215.52	215.0	
35 51 43.0	95 46 01.0	C	100.000 kw	308 M			
Journal Broadcast Corporat BMLH20120307ABT							
KAZE 32 41 54.0	LIC-N 295C3 94 37 04.0	Ore City NC	TX 8.200 kw	148.0 153 M	160.65	142.0	18.7
Reynolds Radio, Inc. BLH20000103ABB							
KRVA-FM 33 07 30.0	LIC 296A 95 44 32.0	Campbell C	TX 3.600 kw	192.6 129 M	91.39	72.0	19.4
The Way Radio Group Llc BMLH20031121AIC							
KZZA 33 26 13.0	LIC-N 294C 97 29 05.0	Muenster NCX	TX 75.000 kw	253.7 620 M	189.52	165.0	24.5
Liberman Broadcasting Of D BMLH20060717AAF							
KLBC 34 02 12.0	LIC-Z 292C3 96 25 37.0	Durant ZC	OK 16.500 kw	278.5 123 M	83.96	42.0	42.0
Mid-continental Broadcasti BLH20110628ABJ							
KZRC 33 53 22.0	LIC-Z 241A 96 09 07.0	Bennington ZCX	OK 6.000 kw	265.8 100 M	57.92	10.0	47.9
North Texas Radio Group, L BLH20130319ACJ							
KZIG 34 25 08.0	LIC-N 298A 96 11 24.0	Wapanucka NCX	OK 2.300 kw	312.0 118 M	81.74	31.0	50.7
Keystone Broadcasting Corp BLH20130318AEF							
KQDR 33 42 31.0	LIC 297A 96 24 09.0	Savoy CX	TX 3.700 kw	253.4 128 M	84.62	31.0	53.6
Prophecy Radio Group, Llc BLH20101122AAZ							
KOMS 34 57 47.3	LIC 297C 94 22 30.7	Poteau CX	OK 100.000 kw	42.3 577 M	156.10	95.0	61.1
Cumulus Licensing Llc BLH20090630ACU							
KYNZ 34 17 52.0	LIC-Z 296C3 97 09 12.0	Lone Grove ZCX	OK 24.500 kw	285.8 102 M	155.47	89.0	66.5
Lkcm Radio Licenses, L.p. BLH20020722AAY							
KTFS-FM 33 25 45.0	LIC 296A 94 07 11.0	Texarkana CN	AR 2.900 kw	112.7 146 M	141.83	72.0	69.8
Texarkana Radio Center Lic BMLH19900412KC							

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 % = station fails 73.215.  
 RSV-R = reserved - needs protection, RSV-A = allocation.  
 Page 1

**CERTIFICATE OF SERVICE**

I, Jacquelyn Martin, hereby certify that on this 9th day of February, 2015, I caused to be mailed a copy of the foregoing Comments via first class mail postage prepaid to the following:

Charles Crawford  
Katherine Pyeatt  
2215 Cedar Springs Rd. #1605  
Dallas, Texas 75201

  
\_\_\_\_\_  
Jacquelyn Martin