

FCC MAIL SECTION

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Federal Communications Commission

DA 99-673

DISPATCHED BY

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 91-58
Table of Allotments,)	RM-7419
FM Broadcast Stations.)	RM-7797
(Caldwell, College Station)	RM-7798
and Gause, Texas))	

**REQUEST FOR SUPPLEMENTAL COMMENTS
IN RESPONSE TO COURT REMAND**

Adopted: March 31, 1999

Released: April 9, 1999

By the Chief, Policy and Rules Division:

1. The Commission has before it the Order in Henderson v. FCC, D.C. Cir. 98-1372 (March 8, 1999) in which the U.S. Court of Appeals remanded this proceeding to the Commission. The purpose of the remand is to afford the Commission the opportunity to evaluate a Second Supplement to Application for Review filed by Roy E. Henderson ("Henderson") which was inadvertently not considered by the Commission in its decision in this proceeding. 13 FCC Rcd 13772 (1998). As discussed below, we believe that a final decision should have the benefit of comment by the parties in this proceedings. In order to facilitate comment and reply comment, we will set forth a brief background of this proceeding.

2. In the Report and Order, we granted a proposal filed by Bryan Broadcasting License Subsidiary, Inc. ("Bryan Broadcasting"), licensee of Station KTSR, Channel 297C3, College Station, Texas, for a modification of its license to specify operation on Channel 236C2. 10 FCC Rcd 7285 (1995). In doing so, we denied a conflicting proposal filed by Henderson, permittee of Station KHEN, Channel 236A, Caldwell, Texas, proposing a modification of its construction permit to specify operation on Channel 236C2. Our decision was based on two grounds. First, the Henderson upgrade would not provide the requisite 70 dBu signal to any of Caldwell in contravention of Section 73.315(a) of the Commission's Rules. The subsequent engineering submissions by Henderson purporting to demonstrate that his upgrade proposal would cover 96% of Caldwell were untimely and in any event did not warrant a conclusion that his upgrade proposal would cover 96% of Caldwell. Second, the Bryan Broadcasting proposal would comply with Section 73.315(a) of the Rules and we determined that the proposal complying with all Commission technical requirements should be preferred over the competing proposal that did not comply with Section 73.315(a) of the Rules. Thereafter, we denied a Petition for Reconsideration

filed by Henderson, 11 FCC Rcd 5326 (1996). In its decision, the Commission denied an Application for Review.

3. On January 24, 1997, Bryan Broadcasting filed an application to implement its upgrade (File No. BPH-970124IA). That application was granted on March 20, 1998. In his Second Supplement to Application for Review, Henderson notes that the Bryan Broadcasting application proposed a transmitter site that would enable Station KTSR to cover only 91% of College Station. Henderson therefore contends that a basis for the decision in favor of the Bryan Broadcasting upgrade no longer exists and that the decision should be revisited.

4. As stated earlier, we believe that a final Commission decision should have the benefit of comment from all interested parties in this proceeding. To this end, Bryan Broadcasting and Henderson are specifically requested to submit comments and reply comments concerning the decisional significance of Henderson's Second Supplement. Along with their initial comments, the parties should also take the opportunity to provide relevant and/or updated information concerning their respective proposals. In the interest of administrative finality, no information submitted by a party concerning its proposal following the comment period will be deemed of decisional significance

5. Bryan Broadcasting, Henderson and other interested parties may file comments on or before April 29, 1999, and reply comments on or before May 14, 1999. Comments and reply comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments and reply comments should be served on the following counsel:

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6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504, and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177. For the purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review

by the court. An ex parte presentation is not prohibited if specifically requested by the Commission or the staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such request or summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the other party constitutes an ex parte presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Logan
Chief, Policy and Rules Division
Mass Media Bureau