

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of: )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Kankakee and Park Forest, Illinois) )  
)  
)

MM Docket No. 99-330  
RM-9677

RECEIVED

FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

COMMENTS

El Dorado Communications, Inc. ("El Dorado"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits comments in the above-referenced rule making proceeding. El Dorado is the licensee, through wholly-owned subsidiaries, of radio stations in Texas.

In the Notice of Proposed Rule Making in this proceeding, released December 15, 1999, the Commission solicited comments on whether, *inter alia*, stations short-spaced under Section 73.215 of the Commission's Rules should be treated like pre-1964 grandfathered short-spaced stations in the application of Section 1.420(i) of the Commission's Rules. El Dorado submits that where one or more short-spacings have been created to a station under Section 73.215, the station should be treated like pre-1964 grandfathered stations and permitted to serve the public interest through application of Section 1.420(i) of the Rules where the result will be a preferential arrangement of allotments. This policy was properly applied by the Commission in Killeen and Cedar Park, Texas, MM Docket No. 98-176 (released February 2, 2000) and should

014

likewise be applied to permit the community of license change proposed in the instant proceeding and other similar proceedings. In support whereof, the following is stated:

### **BACKGROUND**

The petitioner in the above-referenced proceeding seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules to reallocate Channel 260B from Kankakee to Park Forest, Illinois. Petitioner's station, WRZA(FM), is a pre-1964 grandfathered short-spaced station which is short-spaced to six other pre-1964 short-spaced stations. In addition, two other stations have created short-spacings to WRZA(FM) pursuant to the provisions of Section 73.215 of the Commission's Rules.

### **DISCUSSION**

Section 1.420(i) of the Commission's Rules permits the modification of an FM or television station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. While there is generally a policy against creating short-spaced allotments, the Commission has repeatedly held that such allotments may be made, under certain circumstances, where no site change is proposed, no existing short-spacing would be exacerbated, and the potential for interference is not increased. Specifically, the Commission has approved Section 1.420(i) community changes for pre-1964 grandfathered short-spaced stations,<sup>1</sup> as well as for so-called "pre-1989" short-spaced stations, *i.e.*, stations that became short-spaced as a result of the Commission's 1989

---

<sup>1</sup> See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992); Berlin and North Conway, New Hampshire, MM Docket No. 97-216 (released September 10, 1999); Oceanside and Encinitas, California, MM Docket No. 99-170 (released September 10, 1999).

changes to the spacing Rules.<sup>2</sup> Moreover, the Commission has extended the policy to apply to stations that have become short-spaced as a result of another station's application of Section 73.215 of the Commission's Rules. The Commission's Report and Order in Killeen and Cedar Park, Texas, stated:

“...where no technical change is proposed by Station KLNC(FM) and where no new short-spacing would be created and no existing short-spacing is exacerbated, we believe that Station KLNC(FM) should be afforded the same opportunity to reallocate its channel and change its community of license as the pre-1964 and the pre-1989 short-spaced stations.”

Killeen and Cedar Park, Texas, *supra*, at Par. 11. The policy established in Killeen and Cedar Park, Texas is sound, equitable, and serves the public interest and, therefore, should be continued.

The Commission's Reasoning is Sound. Just as it is reasonable to allow a pre-1964 or pre-1989 “grandfathered” short-spaced station to change its community of license pursuant to Section 1.420(i) (as long as the station proposes no change in site), so also is it reasonable to allow a station with short-spacings created to it pursuant to Section 73.215 to likewise change its community of license. In all such circumstances, the goal of a Section 1.420(i) community change – a preferential arrangement of allotments without a net loss in service – can be met whether a station is short-spaced or fully-spaced. The decision to extend Section 420(i) to stations short-spaced pursuant to Section 73.215 was a sound and reasonable one, and the policy should be continued.

The Application of Section 420(i) is Equitable. There is no rational basis for distinguishing between grandfathered short-spaced stations and stations with short-spacings created to them under Section 73.215 of the Rules. In both cases, the station has become short-

---

<sup>2</sup> See Fremont and Holton, Michigan, MM Docket No. 98-180 (released October 10, 1999).

spaced through no action on its part, but as a result of Commission-initiated Rule changes or actions by other stations applying, with Commission approval, the Commission's spacing Rules. Thus, fundamental fairness requires that all like-situated short-spaced stations be permitted to take advantage of Section 420(i) to improve their service to the public.

The Policy Serves the Public Interest. Extension of Section 1.420(i) to stations short-spaced pursuant to Section 73.215 serves the public interest because it allows more stations to provide first aural transmission, first aural reception, and/or first local transmission service to communities lacking such services. Provision of these services, and the resulting "preferential arrangement of allotments," is the goal of the Section 307(b) of the Communications Act of 1934, as amended, and the Commission has specifically stated that Section 1.420(i) of its Rules was adopted to further the goals of Section 307(b). See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In the instant case, the petitioner has proposed to relocate Station WRZA(FM) to provide a first local service at Park Forest without depriving Kankakee of its sole local service, in furtherance of Priority 3, first local transmission service. Accordingly, the public interest will be served by allowing short-spaced stations such as WRZA(FM) to change communities under Section 1.420(i) in cases such as this, which serve to further the Commission's FM allotment goals.

## CONCLUSION

In sum, El Dorado Communications, Inc., respectfully submits that the policy set forth in Killeen and Cedar Park, Texas, *supra*, which allows a station short-spaced by another station's application of Section 73.215 of the Commission's Rules to change its community of license

pursuant to Section 1.420(i) of the Rules where the result is a preferential arrangement of allotments, serves the public interest and should be continued.

Respectfully submitted,

EL DORADO COMMUNICATIONS, INC.

By: Mary L. Plantamura  
Lawrence Roberts  
Mary L. Plantamura

Davis Wright Tremaine LLP  
1500 K Street, N.W.  
Suite 450  
Washington, DC 20005  
(202) 508-6600

Its Counsel

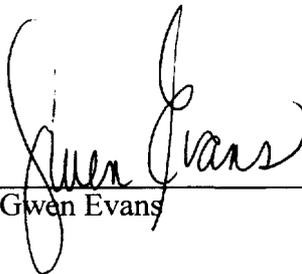
February 7, 2000

CERTIFICATE OF SERVICE

I, Gwen Evans, an executive assistant in the law firm of Davis Wright Tremaine LLP, do hereby certify that copies of the foregoing "Comments" have been sent by first-class U.S. mail, postage prepaid, this 7<sup>th</sup> day of February, 2000, to the following:

Dennis J. Kelly, Esq.  
Post Office Box 6658  
Annapolis, MD 21401  
Counsel for WRZA License Company, L.L.C.

\*John A. Karousos, Esq.  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
Room 3-A266  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554



---

Gwen Evans

\* BY HAND