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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of)	
)	
Amendment of 73.202(b))	MM Docket No. 99-342
Table of Allotments)	RM-9773
FM Broadcast Stations)	
(George West and Pearsall, TX))	

To: Kathleen Sheuerle
Allocations Branch
Mass Media Bureau

RESPONSE OF CRBC

Charlotte Radio Broadcasting Company ("CRBC") respectfully submits this "Response" to the Reply Comments filed by Petitioner John Furr in MM Docket No. 99-342, released December 3, 1999, which proposes in pertinent part to amend the FM Table of Allotments by substituting channel 281C1 for channel 281A at Pearsall, TX and to modify the authorization currently held by John Furr for channel 281A to specify operation on the higher class channel at Pearsall, TX. ^{1/}

^{1/} CRBC respectfully submits that the FCC's receipt and consideration of this "Response" pleading by CRBC is in the public interest because it (i) fairly allows CRBC one opportunity to respond to assertions concerning CRBC that were made for the first time in Petitioner's Reply Comments and (ii) lawfully contributes toward a complete factual record and evenhanded decisionmaking by the FCC. See 47 USC 154(j) (FCC is required by law to conduct its proceedings in such a manner as will meet the "ends of justice"). To the extent required, CRBC expressly requests a waiver of any FCC rules necessary to meet the foregoing statutory goal and to accept this "Response" for filing in this proceeding.

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In its timely filed Comments in this proceeding, CRBC noted that it had petitioned the FCC in September 1999 to allocate channel 227A at Charlotte, TX as a "first local service." See Docket No. 99-304, RM 9738 (NPRM released October 15, 1999). The Comments also noted that the allotment reference point that was subsequently proposed by Petitioner John Furr in this Pearsall, TX proceeding is short-spaced under Section 73.207 of the FCC's rules to CRBC's proposed allotment reference site in the Charlotte, TX proceeding. See Comments of CRBC, filed December 3, 1999, at Engineering Statement. Rather than simply opposing the Furr proposal in this proceeding because of its procedural and substantive defects, CRBC's Comments constructively noted that the FCC could accommodate both Petitioners in both rulemakings by simply adopting a slightly different allotment reference site for Pearsall that also would accommodate the FCC's allotment of channel 227A as a "first local aural service" at Charlotte, TX. See Engineering Statement, supra.

In its Reply Comments, however, Petitioner John Furr opposes CRBC's proposal to accommodate both FCC rulemakings and he insists that the FCC should adopt his proposed allocations reference site because to do otherwise might limit the number of persons that could theoretically be served by Furr's proposed "additional" aural service for Pearsall. Petitioner's "narrow" approach is flawed both procedurally and substantively.

First, the FCC's NPRM in CRBC's Charlotte, TX proceeding was released on October 15, 1999 (see DA 99-2187) and it specified a

Comment deadline of December 6, 1999. Even though Petitioner Furr's subsequent proposal in this proceeding -- to upgrade his unbuilt, Class A permit for Pearsall was clearly implicated by CRBC's pending rulemaking -- Furr chose NOT to file any Comments in CRBC's proceeding. The FCC is entitled to treat Furr as having waived his right to object and to subordinate the Pearsall FM proposal to CRBC's previously pending Charlotte FM proposal.

Second, even assuming arguendo that Furr's subsequent proposal should not be subordinated to CRBC's pending rulemaking, Furr errs in asserting (Reply at 2) that the FCC should prefer his interest -- in obtaining a Pearsall allotment site from which, hypothetically, he might potentially serve a greater population -- over the greater public interest in a Pearsall site that would accommodate BOTH an upgrade of Furr's CP and also a grant of CRBC's proposal for a "first local service" at Charlotte. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 88-90 (1992). ^{2/}

Finally, Furr also errs in claiming that CRBC's "first local service" proposal for Charlotte, TX can be ignored in this Pearsall, TX proceeding because of another proposal filed subsequently to CRBC's proposal. It is well established that CRBC's "first local service" proposal is entitled to a higher preference in the FCC's FM allocations scheme. Id. Moreover, there is no assurance that the FCC will adopt the subsequently filed Petition to allo-

^{2/} Furr's citation to Endicott, NY, 51 FCC 2d 50 (1975) is inapposite, as there was no competing "first local service" proposed in that case.

cate channel 272A to Charlotte -- or even that the Petitioner in that proceeding will continue to prosecute that proposal. ^{3/}

In sum, if the FCC should conclude to grant Furr's proposal to upgrade his unbuilt CP in any respect, it should adopt an allocations reference site for Pearsall, TX that accommodates CRBC's previously pending proposal for a "first local service" at Charlotte, TX.

Respectfully submitted,



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February 11, 2000

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^{3/} There is likewise no support for Furr's contention (Reply at 2, paragraph 5) that the two pending proposals for Charlotte are "competing" in some mutually exclusive sense and that CRBC's channel 227A proposal -- the pleading cycle for which was completed last month -- should not be granted because it would result in a greater "site restriction" than the subsequently filed proposal for a different new FM channel at Charlotte.

Certificate of Service

I, Robert Thompson, do certify under penalty of perjury that I served a copy this date of the foregoing "Response" on counsel for Petitioner at the below listed address:

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Robert Lewis Thompson

February 11, 2000