

Before the
Federal Communications Commission
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Graham, Bridgeport, TX et al.))
)
To: Chief, Allocations Branch)

MM Docket No. 99-233
RM-9662
RM-9828

MOTION TO STRIKE

Elizabeth Smith, by her attorney, hereby moves to strike the "Consolidated Reply of NTRG" filed in this proceeding on April 4, 2000. With respect thereto, the following is stated:

NTRG's pleading is an unauthorized pleading. The original notice and comment pleading cycle in this proceeding ended on August 31, 1999. Subsequently, by *Public Notice*, Report No. 2829, issued on March 3, 2000, the FCC invited comments on the counterproposal filed in this proceeding on August 16, 1999 by North Texas Radio Group, L.P. ("NTRG") (RM-9828). Comments were due 15 days following the *Public Notice*, on March 20, 2000. Elizabeth Smith timely filed Comments in response to the *Public Notice*.

The FCC did not request or provide leave to file "reply" comments. Moreover, NTRG did not request leave to file a Reply. As such, NTRG's "Consolidated Reply" should be stricken.

Moreover, should the Commission elect to consider NTRG's unauthorized reply, it should be noted that NTRG's "reply" apparently seeks only to confuse the record in this proceeding and to improperly modify its counterproposal. NTRG claims that its counterproposal requesting a change of city of license for Station KACO(FM) from Channel

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253C3/Ardmore to Channel 251A/Tecumseh is proper because "the mutual exclusivity for Tecumseh in this "daisy-chain" rulemaking is established by Tecumseh's relationship to the proposed downgrade of channel 251A [KJMZ (FM)] at Lawton, OK, not its relationship to Ardmore, OK." Reply at 2. NTRG misses the point. Under Section 1.420(i) of the rules:

In the course of the rulemaking proceeding to amend §73.202(b) or §73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

47 C.F.R. § 1.420(i). In this case, the existing operation of Channel 253C3 at Ardmore is *not* mutually-exclusive to the proposed allotment reference point for Channel 251A at Tecumseh. Thus, the proposed city of license change does not comply with Section 1.420(i) of the Rules. Similarly, the proposed change of city of license for Station KFYZ, either as originally or currently proposed, does not comply with Section 1.420(i) of the Rules. Originally, it was proposed that Station KFYZ be modified from Channel 253C3/Bonham to Channel 262A/Fort Towson. Counterproposal at 9-10. However, the current KFYZ operation and the proposed new operation at Fort Towson, Oklahoma are not mutually exclusive. Therefore, the proposed community of license change for KFYZ put forth by NTRG (as originally proposed) is not in compliance with Section 1.420(i) of the Rules and could not be granted.

To address that rule violation, NTRG impermissibly is attempting to modify its counterproposal beyond the deadline date for filing counterproposals in this proceeding, and is now instead proposing to modify Station KFYZ from Channel 253C3/Bonham to Channel 253A/Price. Reply at 3. Even if that modification of NTRG's counterproposal could be accepted at this late date, the proposed modification does not eliminate NTRG's rule violation.

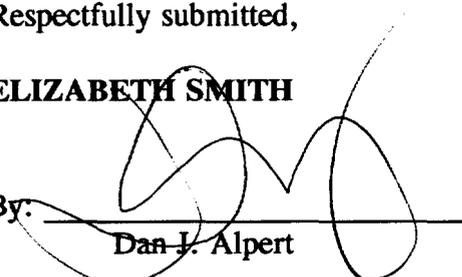
There again, the reference point for the existing KFYZ operation is not mutually exclusive with the reference point for the new proposed community/allotment for KFYZ (Channel 253A/Price, Texas)¹ and the amended proposal therefore itself *remains* in violation of Section 1.420(i) of the Rules.

For these simple reasons, regardless of whatever *other* mutual exclusivities exist within NTRG's counterproposal, the counterproposal is deficient.

Accordingly, Elizabeth Smith requests that the "Consolidated Reply of NTRG" be stricken, and the counterproposal denied.

Respectfully submitted,

ELIZABETH SMITH

By: 

Dan J. Alpert

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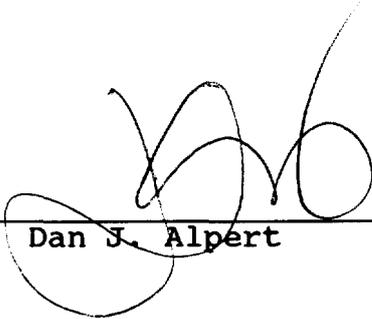
May 4, 2000

¹ The proposed coordinate of the Price, Texas allotment are 32° 07' 40" N, 94° 47' 30" W. A Class operation from those coordinates is fully-spaced with Station KTJM/Channel 253C3/Bonham by 62 kilometers.

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that the forgoing document was sent by First Class Mail, postage prepaid, to the following:

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