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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Quannah, Archer City, Converse, Flatonia,)
Georgetown, Ingram, Keller, Knox City,)
Lakeway, Lago Vista, Llano, McQueeney,)
Nolanville, San Antonio, Seymour, Waco and)
Wellington, Texas, and Ardmore, Durant,)
Elk City, Healdton, Lawton and Purcell,)
Oklahoma.))

MM Docket No. 00-148
RM-9939
RM-10198

TO: John A. Karousos, Chief
Allocations Branch, Policy and Rules Division
Mass Media Bureau

**SURREPLY OF ELGIN FM LIMITED PARTNERSHIP
AND CHARLES CRAWFORD**

1. Elgin FM Limited Partnership ("Elgin FM") and Charles Crawford ("Crawford") (collectively, "Elgin FM/Crawford") hereby respond to new matter first raised in the "Reply to Partial Opposition to Motion to Strike [sic]" ("Reply") filed by First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") on December 26, 2001. ^{1/}

2. While the Joint Parties' Reply does address matters raised by Elgin FM/Crawford

^{1/} Despite its title, the Joint Parties' Reply was directed to the "Partial Opposition to Motion to Accept Supplement" filed by Elgin FM/Crawford in this matter. However, the Joint Parties failed to serve a copy of their Reply on counsel for Elgin FM/Crawford. The Joint Parties corrected that oversight on January 16, 2002. See Attachment A. The instant Surreply is being submitted within five business days thereof

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in their Partial Opposition, the Reply is not limited to such matters, as required by the rules. *See* Section 1.45(c) of the Commission's rules. Instead, the Joint Parties devote considerable time, attention, paper and ink to an attack on Crawford. Elgin FM/Crawford take serious exception to that inappropriate, and ill-founded, ambush.

3. The Joint Parties' attack appears to be an effort to discredit Crawford (and, through him, Elgin FM/Crawford) by claiming that Crawford has "overburdened" the Commission "with at least 218 petitions for rule making in the past year. Joint Parties Reply at 5. That attack starts from several incorrect factual premises, and spirals further off-track through several incorrect legal premises. And, most importantly, the whole attack is in any event completely irrelevant to the above-captioned proceeding.

4. Still, in the interest of assuring an accurate record, Elgin FM/Crawford provide the following information.

5. The Joint Parties' Reply includes, as an exhibit, a ten-page listing which appears to consist of rule making petitions for various markets, primarily in Texas and Oklahoma. The listing purports to identify petitioners for each of the petitions. According to the Reply, "40 of these petitions were actually signed by Crawford". Joint Parties Reply at 5, n. 5. But Crawford is shown as the petitioner in only 32 of the listings in the Joint Parties' exhibit. And review of the underlying docket in at two of those 32 proceedings (*i.e.*, Docket Nos. 01-80, Eagle Lake, Texas, and 01-183, Rule, Texas) reveals that the petitioner there was *not* Crawford, but rather somebody else. And at least two of the remaining 30 proceedings listed are duplicate entries (Snyder, Texas).

6. So on the discrete -- and, one would have thought, easily doublechecked --

question of petitions actually attributable to Crawford, the Joint Parties are off by more than 33%.

7. Not content with its overstatement relative to the number of petitions actually attributable to Crawford, the Joint Parties ascribe a total of "at least 218 petitions" to Crawford. Joint Parties Reply at 5. But the Joint Parties' exhibit includes a total of only 211 proceedings so, again, the Joint Parties' representation is not supported by their own exhibit.

8. And, as noted, of the 211 proceedings listed, only 29 (if you exclude just the improperly listed proceedings, not to mention any other possible misstatements by the Joint Parties not noted above) are in fact attributable to Crawford. The Joint Parties address the inconsistency between their representation (*i.e.*, Crawford supposedly overburdened the Commission with 218 petitions) and their own exhibit (*i.e.*, only 40 listed -- in fact, no more than 29 correctly listed -- for Crawford) with the remarkable claim that "all [of the petitions listed by the Joint Parties] have the same format and all seem to have some relationship to Crawford." Joint Parties Reply at 5. In other words, the Joint Parties have no real basis for their claim . . . but that doesn't stop them from making it.

9. Thus, the Joint Parties' attack on Crawford is factually flawed in multiple respects.

10. It is also legally flawed. The Joint Parties claim that Crawford has "expressed an interest in more new stations in Texas than any individual is capable of constructing". Joint Parties Reply at 4. The implication here seems to be that Crawford lacks sufficient financing to construct the stations in markets for which he has proposed allotments.^{2/} But in making that

^{2/} Presumably, the Joint Parties are making this argument on the assumption that Crawford is responsible for 218 allotment proposals. It is not clear whether they would make the same argument if he were responsible for only 31 proposals, or some other number less than 218.

argument, the Joint Parties are living in the past. Since the adoption of auction procedures for broadcast construction permits, concerns about the financial qualification of applicants have been relegated to regulatory history. *Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd 15920,15956-57, 15989 (1998). So even if the Joint Parties' claim about Crawford were completely accurate, it would be of absolutely no consequence whatsoever.

11. A further legal, or at least conceptual, point on which the Joint Parties err is their suggestion that 218 petitions for rule making could conceivably cause an "overburden" in any meaningful way. The fact is that the purpose of the Commission's Allocations Branch is to allocate channels -- not just to communities that the Joint Parties might prefer, but to communities and areas in need of radio service. *See* 47 U.S.C. §307(b). While the Joint Parties may already own, control or operate more than 1,000 radio stations across the country -- approximately 10% of all commercial U.S. radio stations -- that does not give them the right to dictate where remaining channels can or should be allotted.

12. To the contrary, the Joint Parties' belittlement of the petitions they ascribe to Crawford reveals a mindset from which the Commission should recoil. In their attack on Crawford, the Joint Parties seem to be saying that the only real petitions for allotment, the only petitions which the Commission should deem to be serious and which the Commission should consider on their merits, are petitions advanced by the Joint Parties.^{3/} In the Joint Parties' view, petitions such as those they ascribe to Crawford are just a pesky "overburden" which can and should be ignored.

13. But consider this. It is at least possible, if not extremely likely, that beyond the

^{3/} As Billie Holiday observed, in a different context: "Them's that got shall get, them's that not shall lose". Holiday/Herzog, "God Bless the Child".

hundreds of markets already served by the Joint Parties, there are communities and areas which do not presently have service, but which may need service either now or in the future. But if the FM band is to be dedicated primarily to the greater good of the Joint Parties and their on-going efforts to juggle the allotment scheme to assure that they are able to increase their service to huge, already-well-served areas, how are those other markets going to get service? Petitions such as those criticized by the Joint Parties in fact reveal efforts by petitioners to put channels into places where they are or will be needed, not where they will simply serve the needs of the Joint Parties.

14. The vast majority of the more than 200 petitions complained of by the Joint Parties propose a first aural broadcast service or the first competitive aural broadcast service for a relatively small community which is not strategically located in order to achieve service for a nearby radio market that might remotely compare with the bogus first local service claims that contaminate the Joint Parties' proposals. Petitions such as this give vitality to Section 307(b) values in today's world of mega-radio broadcasting giants, and reinforce the point previously made by Elgin FM/Crawford, that the Joint Parties' efforts to increase their hold on FM spectrum in major markets is ill-advised as a matter of policy and inconsistent with the mandate of Section 307(b) of the Communications Act.

15. In sum, Elgin FM/Crawford remain firm in their conviction that the Joint Parties' Counterproposal is, and has since its initial filing been, seriously flawed, and that the Joint Parties extraordinary late hit on Crawford is nothing more than a misguided and (as demonstrated

above) deeply flawed effort to redirect the Commission's attention away from the defects in the Joint Parties' own filings.

Respectfully submitted,


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January 24, 2002

CERTIFICATE OF SERVICE

I, Gene A. Bechtel, hereby certify that on this 24th day of January, 2002, I caused copies of the foregoing "Surreply of Elgin FM Limited Partnership and Charles Crawford" to be hand delivered (as indicated below) or placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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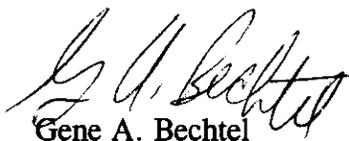
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