

2. New Ulm has suggested to the Commission that a resolution to the short-spacing can be accomplished by specifying new reference coordinates for channel 222C3 at Schulenburg, and that to do so “*does not change the overall new Ulm proposal in any recognizable way, or to the prejudice of any party*”. This is clearly not the case. The original Smiley proposal was vetted and accepted by the Commission and placed on public notice for comments and counterproposals subject to a deadline of October 21, 2002.¹ This is an absolute deadline for comments and counterproposals. The Commission has held counterproposals, such as the New Ulm Counterproposal, to certain standards, principally that petitions for rulemakings and counterproposals must be technically correct at the time they are filed.’ Further, the Commission has also held that it will not allow rulemaking participants to perfect their proposals after the comment date to the prejudice of another party.’

3. New Ulm effectively seeks to perfect its own proposal at the expense of the original Smiley Petition. This is blatantly unfair and irreparably harms the Smiley proposal if it were to succeed. As stated in my Reply Comments, the New Ulm Counterproposal was defective at the time of filing. Nevertheless, New Ulm argues that “*there was no way that New Ulm could have been aware of the filing or the conflict in site spacing*”, while it is obvious that the statement is factually correct, it is equally obvious that the New Ulm Counterproposal, involving some 11 different communities, Smiley, Yoakum, New Ulin, Schulenburg, Ganado, Point Comfort, Victoria, Refugio, Three Rivers, Flatonia

¹ Smiley NPRM Docket 02-248: Adopted on August 14, 2002, Released: August 30, 2002, Comment Date: October 21, 2002, Reply Comment Date: November 5, 2002

² See Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas, 3 FCC Rcd 6507 (MM Bur. 1988)

³ See Santa Margarita and Guadalupe, California, 4 FCC Rcd 7887 (MM Bur. 1989)

and Shiner all in Texas, placed itself at risk to potential short-spacing issues by filing its Counterproposal on the last date possible.

4. New Ulm continues with its effort to perfect other imperfections contained within its Fatally flawed Counterproposal, although mostly a case of transposed or improperly referenced channels and coordinates, and perhaps explainable, these errors have no real impact on the New Ulm Counterproposal. However, in the case of the Consent Agreement of KYKM to change Frequency at its existing transmitter site, New Ulin now comes forward and seeks to wholly change the Consent Agreement of KYKM by substituting a new and significantly different agreement dated November 1, 2002 that now calls for a new transmitter site location. Again, this is an effort by New Ulm to perfect its Counterproposal and is not allowed by Commission rules. New Ulm also raises an issue as to who is the true and correct licensee of radio station KYKM. According to New Ulm, the licensee of KYKM is LaGrange Broadcasting Corporation. New Ulm includes a footnote [referring to a April 12, 2000 FCC public notice to confirm that fact. This contradicts information obtained from Commission staff where the official licensee of KYKM is listed as Fort Bend Broadcasting Company, Inc. This is also the same licensee name that appears on the FCC website when making a FM Query and also when searching the Consolidated Databasc for the station licensee for KYKM The last ownership report is the only record that exist that currently refers to the name of LaGrange Broadcasting Corporation. It would appear that the only officially recognized licensee of radio station KYKM is Fort Bend Broadcasting Corporation and as such would be the only authorized agent *to* act on behalf of KYKM.

5. The rules of the Conunission are designed to provide for a clear and orderly

disposition to the various request that are presented to it on a daily basis. Any other “special factors”, as noted by New Ulin, must first clear the standards required of all counterproposals as above described. The Commission should deny any attempt by New Ulm to remedy material facts. Specifically, a new transmitter site location, including new reference coordinates to eliminate a late discovered short-spacing issue. Also, the Commission should deny the request by New Ulm to modify the KYKM Consent Agreement specifying the new transmitter site location including the new reference coordinates. The request by New Ulm, after the close of the Comment date, of the Commission to accept these modifications of its Counterproposal would ultimately and significantly prejudice the original Smiley proposal. The Commission should uphold its long held position, as previous noted, that it will not allow counterproposal proponents the opportunity to perfect their proposals to the prejudice of another participant in the same proceeding.

II.

The Reply Comments of LBR Enterprises, Inc

6. The Reply Comments of LBR Enterprises “LBR” states “*Because the allotment plan submitted by New Ulm Broadcasting Company (“NUBC”) in its Counterproposal, as more fully described below, will result in a more preferential arrangement of allotments, LBR supports the adoption of NUBC’s allotment plan.*”

However, the New Ulm plan does not provide for a C3 allotment for radio station KZRC in Markham, Texas. It should be therefore concluded that LBR is effectively withdrawing its support of its own Counterproposal and is no longer of any further consideration in this proceeding.

7. Even more puzzling is the LBR request of the Commission to grant a one-step upgrade of KZRC on 223C3 in Markham, Texas. LBR contends that *“so long as the Commission does not allot Channel 280A to Smiley, Texas in this allotment proceeding, LBR’s KZRC(FM) One-Step Application may be processed by the Commission with no conflict to any other proposed allotment in this proceeding.”* This is clearly not true, the KRZC One-Step application cannot now be processed by the Commission because it is significantly short-spaced to KYKM and is contingent upon New Ulm prevailing in this proceeding, which is doubtful at best. Thus, LBR and KRZC must now wait for the ultimate resolution of Smiley before proceeding with its previously filed One-Step application. However, it is also doubtful that the One-Step application is acceptable for processing by the Commission. In the final Report and Order for Docket 01-104, concerning several communities including Auburn, Alabama, the Commission stated *“it is our policy not to accept rulemaking proposals that are contingent on the licensing of facilities set forth in an outstanding construction permit⁴ or are dependent upon final action in another rulemaking proceeding⁵. The rationale for this policy is that processing contingent proposals is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the staff⁶. The staff would either have to wait until the contingency is met, thereby further delaying action in a case,*

⁴ See *Cut and Shoot, Texas*, 1 FCC Rcd 16383 (Policy and Rules Div. 1996) (dismissal of a rulemaking petition that was fully spaced to an outstanding construction permit of another station but was short-spaced to the licensed site of the station affirmed because the proposal violated Section 73.208(a) and was contingent on the building and licensing of the facilities set forth in the construction permit).

⁵ See, e.g., *Esperanza, Puerto Rico, Christiansted, Virgin Islands*, 11 FCC Rcd 2908 (Policy and Rules Div. 1996) (dismissal of a rulemaking petition affirmed because the request was contingent on the outcome of another proceeding that was not final due to the pendency of a petition for reconsideration); *Oxford and New Albany, Mississippi*, 3 FCC Rcd 615, 617 n.3 (1988), recon., 3 FCC Rcd 6626 (1988); and *Frederiksted, Virgin Islands and Culebra and Carolina, Puerto Rico*, 10 FCC Rcd 13627 (Allocations Br. 1995).

⁶ See *Cut and Shoot, Texas*, 11 FCC Rcd at 16384.

*or would have to revisit a decision if a proposal was granted contingent on the outcome of an action that never occurred In either case, **the** staff's attempts at processing cases and achieving finality is frustrated."* Without question, the Commission's ruling applies to the One-Step application tiled by LBR. Clearly, many more steps will be required before the LBR request for KRZC may be in a position to grant. Therefore, the Commission should dismiss the One-Step application filed by LBR for the upgrade of KRZC Markham as it is improperly filed. The Commission should also dismiss the effectively withdrawn LBR Counterproposal for Sniiley, Texas.

8. The Commission's choice has been made rather simple, the Counterproposal by New Ulin is fatally flawed and should be dismissed, the Counterproposal by LBR has been effectively withdrawn and the One-Step application for KRZC by LBR is not acceptable for processing and should not be a part of this proceeding. The only remaining proposal for consideration is the original Smiley, Texas Channel 280A allocation request which has been vetted and deemed to be in the public interest and is ready to be adopted and officially added to the FM allocation table.

9. Because of all the issues raised by the Reply Comments of both New Ulin and LBR, it is in the public interest, in order to preserve as accurate a record as is possible, to accept this response to the above mentioned Reply Comments.

10. For the foregoing reasons, I urge the Commission to allot Channel 280A to Smiley, Texas and deny the New Ulm Broadcasting Company and LBR Enterprises, Inc. Counterproposals. Should this petition be granted, and Channel 280A be allotted to Smiley, Texas, Petitioner will apply for Channel 280A, and after it is authorized, will promptly construct the new facility.

The factual information in this "RESPONSE OF LINDA CRAWFORD TO
REPLY COMMENTS OF NEW ULM BROADCASTING AND LBR ENTERPRISES,
INC." is correct and true to the best of my knowledge

Respectfully submitted,



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for the Petitioner. It is requested that the Commission and any parties who may file
pleadings in the captioned matter serve copies to Mr. Bechtel as well as the Petitioner.

November 15, 2002

CERTIFICATE OF SERVICE

I, Linda Crawford, hereby certify that on this 15th day of November, 2002, I caused copies of the foregoing "RESPONSE OF LINDA CRAWFORD TO REPLY COMMENTS OF NEW ULM BROADCASTING AND LBR ENTERPRISES, INC." to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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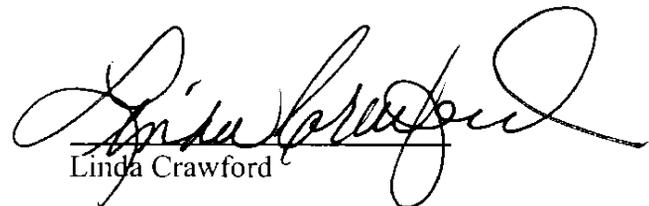
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