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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
FM Table of Allotments)
FM Broadcast Stations)
(Broken Bow, Oklahoma))
)
)

DEC -- 3 2002

MB Docket No. 02-301
RM-10578
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy and Rules Division
Media Bureau

REPLY COMMENTS

Radio One Licenses, L.L.C. ("ROL"), licensee of Station KTXQ-FM,¹ at Gainesville, Texas, by its counsel and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Reply Comments in the above-captioned rule making proceeding. ROL's reply relates to the document styled "Petitioner's Comments" dated November 7, 2002 and addressed to John Karousos, Assistant Chief, Audio Division of the Media Bureau (a copy of the Petitioner's Comments is attached hereto). The Commission should dismiss the Petitioner's Comments submitted by Jeraldine Anderson ("Anderson") as untimely filed, dismiss the Petition for Rule Making filed by Anderson on October 16, 2001 as procedurally defective and factually inaccurate, and should terminate the above-captioned rule making proceeding. In support whereof, ROL states as follows:

I. Petitioner's Comments like her Petition are Procedurally Defective

ROL has previously urged the Commission to reject the Petition for Rule Making filed by Anderson on October 16, 2001 to allot Channel 232A at Broken Bow as procedurally defective

¹ Effective June 6, 2002, the call letters for KTXQ-FM changed to KSOC(FM). For ease of reference, the station will continue to be referred to herein as KTXQ-FM

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because it constitutes a prohibited request for contingent Commission action in violation of Sections 73.3517 and 1.401(e) of the Commission's rules and the policy established by the Commission in Cut and Shoot, Texas, 5 CR 447 (1996). With the passage of the November 18, 2002 comment deadline established by the Commission in the instant proceeding and Anderson's apparent failure to timely file her continuing expression of interest in the allotment of Channel 232A at Broken Bow, ROL submits that the Commission must deny acceptance of Anderson's late-filing and again urges the Commission that dismissal of the Broken Row Petition is warranted.

A. Anderson's Petition **was** Prohibited Request **for** Contingent Commission Action

In ROL's Reply Comments filed in MM Docket Nos. 01-216, 01-209, RM-10495 and RM-10496 ("July Reply Comments") and its Comments in the instant proceeding ("Comments") ROL identified the serious procedural deficiencies in Anderson's original Petition for Rule Making to allot Channel 232A at Broken Bow.² To summarize, ROL's July Reply Comments noted that acceptance of the Anderson Petition was contingent upon the Commission acting on a request for dismissal of an earlier filed petition for rule making to allot Channel 232 to Clayton, Oklahoma by Maurice Salsa. The Commission acted to dismiss the Clayton proposal on the same day it adopted the NPRM in the instant proceeding (see, FCC No. **DA** 02-2308, released in MM Docket No. 01-191 and FCC No. DA-02-2321. both adopted September 11, 2002 and released September 27, 2002). ROL submits that this Commission action was in error and should be reversed as contrary to past Commission precedent (Cut and Shoot, Texas, supra) and the clear language of Sections 73.3517 and 1.401(e) of the Commission's Rules. Had the

² ROL incorporates herein by reference its Comments in the instant proceeding, its July Reply Comments and all of its previously filed pleadings in MM Docket Nos. 01-209, 01-216, 01-255, 01-269, RM-10495 and RM-10496 to the extent that they impact the proposed Broken Bow allotment

Commission rejected the Anderson Petition. it would have been spared the unnecessary burden on the administrative resources of its Allocations Branch in considering ROL's attempts to find global solutions to the allotment requests in the many dockets to which its application for modification of KTXQ-FM is now tied.

B. Petitioner's Comments are Untimely and Should be Rejected

The Petitioner's Comments appeared in the Commission's Electronic Comments Filing System ("ECFS") as associated with MM Docket No. **01-302** for the first time on December **2, 2002**. Until that time, only the original Petition for Rulemaking, the NPRM and ROL's Comments were available through ECFS. Moreover, the Petitioner's Comments were not served on ROL. Although service on ROL may not have been technically required by the Commission's Rules, Anderson is no doubt aware of ROL's continuing interest in this proceeding and its impact on ROL's pending application for modification of Station KTXQ-FM.

A copy of the attached Petitioner's Comments was received by fax on November **25, 2002** following a phone inquiry by the undersigned counsel to ROL to Gene **A. Bechtel**, who has represented Anderson in other proceedings, but who was apparently not involved in the filing of the Petitioner's Comments. A review of the document itself indicates that it was not filed through the Commission Secretary's office, as is required by the Commission's Rules and the NPRM in MM Docket No. **02-301** at para. **3**. Rather, the document was addressed to the assistant division chief of the Allocations Branch. ROL has been unable to locate a date-stamped copy of the Petitioner's Comments that indicates it was properly filed through the Secretary's office on or prior to the November 18, 2002 deadline set forth in the NPRM. The copy of the Petitioner's Comments in ECFS bear only an "FCC Mail Room" stamp date, not a stamp from the Secretary's office. Even if the Petitioner's Comments are re-filed properly through the

Secretary's office now, they will at best be considered late-filed. This is yet another reason for the Commission to dismiss the Anderson Petition as procedurally defective.

Compliance with Sections 1.415 and 1.419 of the Commission's Rules and the language of the NPKM itself is vitally important in allowing the Commission's rule making processes to work effectively. Requiring a petitioner to attest to its continuing expression of interest in prosecuting the eventual allotment of a new channel is an important factor in the Commission's decision-making process. Timely filing is essential to maintaining efficient processing and failure to comply undermines the Commission's ability to conduct its business within a reasonable period of time. Although the Commission will sometimes accept late-filed expressions of interest in support of an allocation proposal, this is not uniformly true. In cases where the proposed allotment is opposed and the proposal adversely impacts another pending proceeding or proceedings (as in the instant proceeding) the Commission may reject the late-filed expression and dismiss the petition. In Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Santa Isabel, Puerto Rico and Christiansted, Virgin Islands), 64 RR2d 1408 (1988), the Commission refused reconsideration of the denial of acceptance of late-filed comments by the proponent of a rule making that resulted in the dismissal of the underlying petition. Like the instant proceeding, the petitioner in the Santa Isabel proceeding proposed a channel that conflicted with an application to relocate the transmitter site of an existing station. Like ROL, the affected licensee timely-filed comments in opposition while the proponent filed its continuing expression of interest comments late. The Commission's denial of the late-filed expression of interest was based upon its conclusion that the adverse affect of the late-filed comments on other pending proposals coupled with the Commission's need to

efficiently conduct its business justified dismissal of the proposal. Specifically, the Commission concluded:

In Table of Allotment rulemaking proceedings, the Commission requires an expression of interest in a proposed channel in order to conduct the rule making process in an orderly manner. Notification of the requirement is set forth in each Notice of Proposed Rule Making issued in response to a channel allotment request. Absent an expression of interest, a newly allotted channel could lie vacant after the Commission had expended limited resources conducting a rule making proceeding and after parties had submitted comments regarding a proposed channel. An expression of interest is all the more important where the requested allotment action would conflict with another application. A further allotment under these circumstances would not only waste Commission and participants' resources, it could preclude additional or improved service elsewhere with no countervailing service benefit to the public. Thus, the requirement of an expression of interest is reasonable and necessary to the efficient conduct of the agency's business, and the Commission has good reason to preserve the integrity of its processes by requiring adherence.

Id. at para. 14, emphasis added,

ROL urges the Commission to follow the precedent set forth in the Santa Isabel case and deny acceptance of the Petitioner's Comments and dismiss the underlying petition to allot Channel 232A at Broken Bow. The Commission can then accept the counterproposal offered by ROL in MM Docket No. 01-216 to site restrict the channel originally proposed by Mr. Salsa for Valliant, Oklahoma (Channel 243C3) and grant ROL's pending application for modification of KTXQ-FM (BPH-20018030ABN) filed more than one year ago. See, Comments and Counterproposal of ROL filed October 22, 2001 in MM Docket No. 01-216.

II. Petitioner's Comments are Factually Inaccurate and Section 307(b) Disfavors Allotment

Assuming arguendo that the Commission allows acceptance of the late-filed Petitioner's Comments, ROL submits that the Commission must recognize the inaccuracies in the scarce data supplied therein. In the Petitioner's Comments, Anderson simply restates the same four sentence argument made in the underlying Petition regarding the merits of allotting another channel to

Broken Bow. However, some of these statements are inaccurate. For example, the allotment of Channel 232A to Broken Bow would not be that community's "first competing commercial service." Rather, the addition of Channel 232A would be a third local service in Broken Bow. As Anderson is aware, the Commission is considering a proposal to allot Channel 285A at Broken Bow in a proceeding initiated by Maurice Salsa in MM Docket No. 01-209. Although he is not identified as such in the Petitioner's Comments, Mr. Salsa is one of the "like-minded petitioners" referenced at paragraph 2 therein that together have filed hundreds of petitions seeking the allotment of hundreds of channels in communities in Oklahoma and Texas. Moreover, Broken Bow is a community of less than 4300 people, not "more than 4500 people" as reported in the Petitioner's Comments. Although not a significant difference in population, it demonstrates the lack of attention to detail that is evident in the Petitioner's Comments. See, [www.http://factfinder.census.gov/servlet/BasicFactsServlet](http://factfinder.census.gov/servlet/BasicFactsServlet)

III. Without Procedural Defects Section 307(b) Favors Allotment of a Site Restricted Channel 234C3 at Valliant over Channel 232A at Broken Bow

Even if the Petitioner's Comments are not considered procedurally defective as either untimely-filed or as contingent and thus prematurely filed under Section 1.401(e), the proposal to allot another channel at Broken Bow should be denied on substantive grounds as comparatively inferior under the allotment criteria established by the Commission. As ROL has previously stated, because ROL's proposed resolution by allotment of a site restriction in the Valliant rule making proceeding conflicts with the use of Channel 232A at Broken Bow, these proposals are mutually exclusive and the Commission must weigh the comparative merits of ROL's proposal as a timely-filed counterproposal against the allotment sought in the instant proceeding. See, ROL's Reply Comments in MM Docket Nos. 01-216 and 01-209, filed November 6, 2001 and previously incorporated herein by reference

In doing so, the Commission must consider the four allotment criteria: (1) provision of first full-time aural reception service; (2) provision of second full-time aural reception service; (3) provision for first local transmission service; and (4) provision for other public interest factors in order to fulfill its Section 307(b) mandate. See, Revision of FM Assignments Policies and Procedures, 90 FCC 2d 88 (1982). Because Channel 232A at Broken Bow would be the community's third local service, the first three priorities are not relevant in this case and the Commission must consider the public interest benefits to be gained from each proposal.

ROI submits that the public interest is far better served by approving ROL's proposed allotment of a frequency at Valliant, together with the improvements at KTXQ-FM than by allotting a third channel at Broken Bow. If ROL's allotment scheme is adopted, the proposed site-restricted Channel 234C3 will provide city grade, first local service to 18,857 people in Valliant, Oklahoma. Approval of the site-restricted Channel 234C3 at Valliant will permit the Commission to grant ROL's pending modification application for KTXQ-FM, allowing it to relocate the station to a taller tower. Under ROL's proposal, Broken Bow will have two available channels allotted to it, including an existing Class C2 FM station. Moreover, the community will continue to receive service from five existing FM stations. See, July Reply Comments, Engineering Exhibit EE-RM. ROL submits such an allotment scheme more than adequately serves the needs of Broken Bow's fewer than 4,300 people.

By contrast, if the Anderson and Salsa proposals for Broken Bow and Valliant, respectively, are adopted, Channel 234C3 will -- once the channel is made available through the Commission's yet-to-be determined auction process -- provide city grade, first local service to 11,389 people in Valliant (nearly 7500 fewer people than under ROL's proposal). No additional people will receive improved service from KTXQ-FM and the fewer than 4,300 people at

Broken Bow, who already have local FM service will have two vacant Class A FM allotments that may be awarded and may be constructed at some time in the future.

ROL submits that the Commission's choice is clear under the Section 307(b) analysis. The public interest benefits to be gained from allotting a first local service on Channel 23463 at Valliant from the site-restricted location proposed by ROL and granting the improvements at KTXQ-FM far outweigh any benefits that might be obtained from allotting the non-site restricted Channel 234C3 proposed by Salsa and the third local service on Channel 232A at Broken Bow by Anderson.

IV. KOL Counterproposal in Instant Docket Remains a Viable Solution

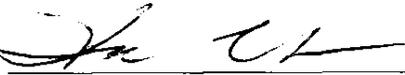
Finally, should the Commission permit the instant docket to proceed, ROL restates the argument set forth in its Comments in this proceeding that still another solution exists that would allow the Commission to resolve the conflicting issues in Docket Nos. 01-216, 02-301, and several other docketed and undocketed proceedings, by separating the award of a first service at Valliant and the modification of Station KTXQ-FM from pending rule makings involving another proposed allotment at Broken Bow (MM Docket No. 01-269) and Wright City (MM Docket No. 01-255, RM-10265). Specifically, ROL proposed the allotment of a site-restricted Channel 262C3 in lieu of the originally proposed Channel 23463 at Valliant. This solution, while not as simple as eliminating the potential allotment of Channel 232A at Broken Bow, affords the Commission and the interested parties a global solution in the affected dockets. Moreover, the proposed solution is supported by both Anderson and Maurice Salsa. See, ROL Comments and Counterproposal filed November 18, 2002.

V. Conclusion

For the reasons set forth above, ROL respectfully requests that the Commission **DENY** the acceptance of the Petitioner's Comments as late-tiled in MM Docket No. 02-301 and **DISMISS** Anderson's Petition for Rulemaking to allot Channel 232A at Broken Bow. Without the potential allotment of Channel 232A at Broken Bow, the Commission can **GRANT** the Counterproposal set forth by ROL in MM Docket No. 01-216 and **GRANT** ROL's application for modification of KTXQ-FM. In the alternative, should the Commission permit the continuation of the instant docket, ROL requests that the Commission **GRANT** the Counterproposal set forth in ROL's July Reply Comments to allot Channel 262C3 at Valliant, Oklahoma in lieu of Channel 234C3.

Respectfully submitted,

RADIO ONE LICENSES, L.L.C

By: 

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December 3, 2002

ATTACHMENT
PETITIONER'S COMMENTS

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of 73.202 (b))	MB Docket No. 02-301
Table of Allotments)	RM-10578
FM Broadcast Stations)	
(Broken Bow, OK))	

To: John Karousos, Assistant Chief
Audio Division of the
Media Bureau

PETITIONER'S COMMENTS

1. Petitioner respectfully submits that the public interest would be served by allocating Channel 232A to Broken Bow, Oklahoma, as that community's first competing commercial FM service. Broken Bow is an incorporated city with a population of over 4,500 people. Broken Bow has its own city manager, Larry Bauchman, its own fire department, its own post office, its own school district, its own city hall and a number of local churches. The proposed channel 232A will provide additional diversity and an outlet for local self-expression to Broken Bow residents and therefore is in the public interest.

2. As the Commission is aware, this is one of a number of petitions filed by this Petitioner and other like-minded petitioners. The purpose of filing such petitions is to seek allotments to relatively small communities which are sufficiently removed from major metropolitan areas that there is no prospect that the allotment is merely a step to inaugurate still another facility serving a major broadcast market. These petitions seek allotments to relatively small communities in their own right. For reasons stated above,

the instant petition merits the requested allotment under established principles in Section 307(b) of the Communications Act.

3. The filing of a number of similar petitions has its genesis in the recent development in radio broadcasting of Localized Network Programming. This is a concept that has been developed by the major broadcasters for essentially mid to major markets. It is an approach that provides the economy of a network but the feel and appearance of local programming. The belief of the Petitioner and like-minded petitioners is that such a plan will work with small market communities on a regional basis. Given a geographical area, such as Eastern Oklahoma, Western Oklahoma, North East Texas, West Texas, South Texas, etc., the licensees of FM stations in small communities of a given region – whether the petitioners themselves or other licensees who might successfully outbid them for the license – could initiate unique network programming designed specifically for that region and additionally provide localized community inserts, such as local weather, local events, programming from specific remote locations, regional-specific news, public affairs, public service announcements, promotions and other programming giving life to the commission's policy favoring localism in broadcasting. While there would be local sales, the focus would also be in regional network sales, drawing on the advantages of advertising to the region and the unique nature of the region.

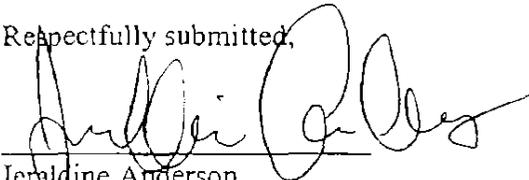
4. The vision is that providing radio service to an area of, say, 5,000 people may not allow for the operation of a traditionally run radio station. However, a network of ten stations in an identifiable geographic area covering, say, 50,000 people could very well be economically viable. This concept is an approach to providing radio service to

clusters of stations in small communities in the nature of modern radio developed by the major group owners for mid and large markets. Such a concept – in lieu of allotting the frequencies to communities in or adjacent to major radio markets – provides a further public interest reason in support of the Petition under Section 307(b).

5. Should this petition be granted, and Channel 232A be allotted to Broken Bow, Oklahoma Petitioner **will** apply for Channel 232A, and after it is authorized, will promptly construct the new facility.

The factual information provided in these Comments is correct and true to the best of my knowledge.

Respectfully submitted,



Jeraldine Anderson
1702 Cypress Drive
Irving, Texas 75061
(972) 445-1523 Tele

cc: Gene A. Bechtel, Law Office of Gene Bechtel, suite 600, 1050 17th Street, N.W., Washington, D.C. 20036, telephone (202) 496-1289, telecopier (301) 762-0156, attorney 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 7, 2002

brokenbowpetitioners

CERTIFICATE OF SERVICE

I, Margaret L. Truitte, a secretary in the law firm of Davis Wright Tremaine LLP, do hereby certify that I have on this 3rd day of December, 2002, caused to be mailed by first-class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

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