

March 13, 2003

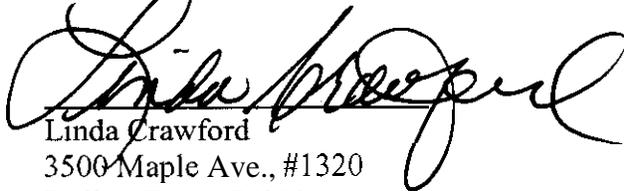
Ms. Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby – TW – A325  
Washington, D.C. 20554

Re: Petition for Rule making  
Smiley, Texas MB Docket No. 02-248  
Reply to Opposition to Comments of Linda Crawford

Dear Ms. Dortch:

Enclosed is an original and four (4) copies each of my “Reply to Opposition to Comments of Linda Crawford” for Smiley, Texas.

Respectfully submitted,



Linda Crawford  
3500 Maple Ave., #1320  
Dallas, Texas 75219  
(214) 289-5333

SmiMotion

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



In the Matter of )  
 )  
Amendment of 73.202 (b) ) MB Docket No. 02-248  
Table of Allotments ) RM-10537  
 )  
FM Broadcast Stations )  
(Smiley, Texas) )

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

**REPLY TO OPPOSITION TO COMMENTS OF LINDA CRAWFORD**

On March 4, 2003, New Ulm Broadcasting filed in this proceeding an opposition to "Comments of Linda Crawford". In their opposition, New Ulm Broadcasting concedes that the changed policy by the Commission regarding a "backfill channel" to replace a reallocated channel would result in denial of its petition.

New Ulm's argument at page 2 that the change in "backfill" precedent is an inappropriate or undesirable "ex post facto" action is without merit. Statutes and regulations apply prospectively; common law court and agency adjudications apply retroactively to current cases involving like considerations. In addition to legal theories for this distinction, the reason is a pragmatic one.

It is not workable to establish a case-by-case prospective effect of adjudicatory decisions. If that were to occur, the agency would be required to maintain a grid of dates

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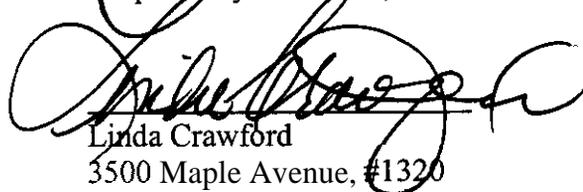
for each of its adjudicatory decisions and establish cutoff lines for similarly-situated parties who are, or are not, bound by those decisions. This would lead to rendering inconsistent decisions potentially over years of time.

Moreover, such cutoff lines would also have to be established with regard to modifications of decisions. For example, during the period when the Commission's now defunct "integration" policies were in effect, the manner in which the Commission treated integration credit for spouses changed some five times over a period of about ten years. The grid of dates and cutoff lines for which New Ulm argues would have to be established for each of those modifications as well.

And, then there could well be the situation where a policy in one form was in effect when Party A was in the case, and was changed before Party B entered the case, and the cutoff lines would apply the changed policy to Party B but not to Party A – obviously an untenable result. In sum, the agency must have flexibility in its case-by-case adjudications and cannot reasonably be expected to place itself in a regulatory straightjacket as New Ulm suggests.

The factual information provided in this "Reply to Opposition to Comments of Linda Crawford" is correct and true to the best of my knowledge.

Respectfully submitted,



Linda Crawford  
3500 Maple Avenue, #1320  
Dallas, Texas 75219  
(214) 289-5333

cc: Gene A. Bechtel, Law Office of Gene Bechtel, suite 600, 1050 17<sup>th</sup> 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.

March 13, 2003

## CERTIFICATE OF SERVICE

I, Linda Crawford, hereby certify that on this 13<sup>th</sup> day of March, 2003, I caused copies of the foregoing “REPLY TO OPPOSITION TO COMMENTS OF LINDA CRAWFORD” to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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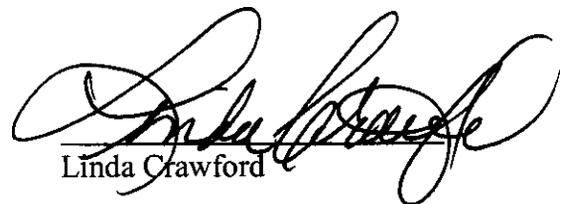
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Linda Crawford