

Before the  
**Federal Communications Commission**  
Washington, DC

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Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	Docket No. 05-229
Table of Allotments,	)	RM-10780
FM Broadcast Stations	)	
(Rosebud and Madisonville, Texas)	)	
	)	
Reclassification of License	)	
of FM Station KNUE, Tyler, Texas	)	

Filed With: **Office of the Secretary**

To: **Assistant Division Chief**  
**Audio Division, Media Bureau**

**PETITION FOR RECONSIDERATION**

Gerald Proctor, by his attorney, hereby submits a Petition for Reconsideration of the Bureau's *Report and Order*, DA 06-1451 (MB July 14, 2006). With respect thereto, the following is stated:

Charles Crawford originally requested the allotment of Channel 267A at Rosebud, Texas. The FCC released the *NPRM* seeking comments on the proposal on July 15, 2005. Subsequently, Charles Crawford proposed withdrawal of his rulemaking proposal. However, before the rulemaking was dismissed, Proctor filed comments stating his support of the proposal. In the *Report and Order*, however, the Commission, dismissed Proctor's expression of interest due to its late filing, citing *Butler, GA*, 21 FCC Rcd 1516 (MB 2006).

That case, however, is totally inapplicable. In *Butler*, the Commission stated:

As a threshold matter, Hedrick's late-filed Comments were properly rejected because the Commission's policy is not to consider an untimely filed expression of interest in an allotment where acceptance would cause an adverse impact on a conflicting proposal. This policy has been upheld by the U.S. Court of Appeals for the D.C. Circuit as reasonable and within the Commission's discretion. In the present case, acceptance of Hedrick's late filed expression of interest would cause prejudice to

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FVSU's counterproposal, which was filed by the comment deadline established in the NPRM.

*Id.* at ¶ 10 (footnotes omitted). This case, however, is uncontested – there were no mutually-exclusive proposals or filed counter-proposals. It is well-established Commission policy to accept late-filed comments in uncontested proceedings. For example, in *Kingfisher, OK*, 12 FCC Rcd 8293 (Allocations Branch 1997), comments were late-filed. The Bureau stated:

Petitioner's comments were received after the initial comment deadline. However, in accordance with the Commission's policy of generally accepting late-filed comments in uncontested proceedings, we have accepted the petitioner's comments to allot it to reaffirm interest in applying for Channel 287A at Kingfisher, Oklahoma. See *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988), *aff'd*, 4 FCC Rcd 3412 (1989), *aff'd sub nom. Amor Family Broadcasting v. FCC*, 918 F. 2d 960 (D.C. Cir. 1990).

*Id.* at n.1. See also, *Chester, Shaster Lake, Alturas, CA et al.*, 13 FCC Rcd 8549, ¶ 16 (Policy and Rules 1998); *Tallulah, LA*, 15 FCC Rcd 10758, n.1 (Allocations Branch 2000); *Hugo, CO*, 16 FCC Rcd 14079, n.1 (Allocations Branch 2001); *Eldorado, TX*, 17 FCC Rcd 12806, n.2 (MB 2002); *Boscobel, WI*, 17 FCC Rcd 4654, n.1 (Allocations Branch 2002); *Robert Lee, TX*, 18 FCC Rcd 19223, n.2 (MB 2003); *Big Pine Key, FL*, 20 FCC Rcd 15213 ¶ 4 ((MB 2005). Accord, *Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, TN*, 16 FCC Rcd 20329, ¶ 3 (“we recognize that late-filed expressions of interest have been accepted in certain cases, this has generally occurred where the proceedings are uncontested and no prejudice would occur to other parties”).

Ironically, in *Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990), a case decided before the United States Court of Appeals and the very case cited by the Bureau in *Butler* is support of dismissal of that proposal, the Court specifically acknowledged that in “uncontested cases...[the FCC’s] policy is to routinely accept late-filed expressions of interest”.

The Commission has given absolutely no justification for its deviation from its standard

policy. As stated previously, acceptance of these Comments and expression of interest at this juncture is in the public interest. In issuing the *NPRM* in this proceeding, the FCC expended considerable time and resources in processing Crawford's original proposal. Moreover, as part of the proposal, it was necessary for the Commission to issue an *Order to Show Cause* to first, propose the downgrading of Station KNUE(FM), Tyler, Texas from Channel 268C to Channel 268C0, and then to accomplish the downgrading in the course of the *NPRM*. In other words, half of the original Crawford proposal – the downgrading of KNUE(FM) – already has occurred! These efforts will be utterly wasted in the event the rulemaking does not go forward. Moreover, this *NPRM* represents Rosebud's only opportunity for a new, first service, allotment at this time. Allowing for dismissal of the allotment for procedural reasons, where an expression of interest clearly exists, would be contrary not only to the general public interest and the public interest of the residents of Rosebud, Texas, it would be contrary to the directives of Section 307(b) of the Communications Act, which requires the Commission to make a "distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b). In light of the ongoing freeze on the filing of new allotment proposals in effect at this time, allowing for the Rosebud proposal to be dismissed at this time despite the existence of a *bona fide* expression of interest would frustrate totally the ability for the first steps to be taken for the establishment of new service to begin. While the late-filed nature of Proctor's comments is regretted, its late-filing certainly poses no bar to its acceptance, based on well-established Commission policy. As the Commission reasoned in *Chester, Shasta Lake City, Alturas, CA*, et al., 13 FCC Rcd at ¶ 16:

While a rulemaking petitioner is expected to submit a continuing expression of interest in the proposed allotment in initial comments..., the Commission has

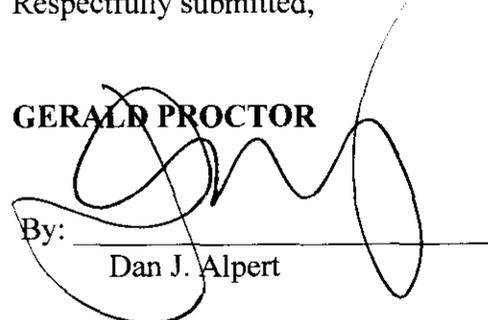
accepted late-filed expressions of interest where there has been no opposition or competing proposal pending. *Santa Isabel, PR*, 2 FCC Rcd 3454, 3455 (Commission 1987), aff'd sub nom. *Amor Family Broadcasting v. FCC*, 918 F. 2d 960, 963 (D.C. Cir. 1991). The rationale for a late acceptance under these circumstances is that no prejudice would occur. In addition, "it is in the public interest to conserve the agency resources that would be necessary to process a second petition for rulemaking filed upon initial dismissal." 918 F. 2d at 963.

Those same considerations are applicable in the present case. Proctor is ready, willing, and able to forcefully and vigorously step into the breach created by Crawford's unexpected withdrawal, and to pursue the allotment. No opposition has been filed to the adoption of the allotment. No opposition even was filed against his expression of interest. Therefore, allowing Proctor's expression of interest to proceed will prejudice no party, and in accord with well-established Commission policy, acceptance of the expression of interest is mandated.

**WHEREFORE**, it is respectfully requested that this Petition for Reconsideration be accepted, and the allotment adopted.

Respectfully submitted,

**GERALD PROCTOR**

By: 

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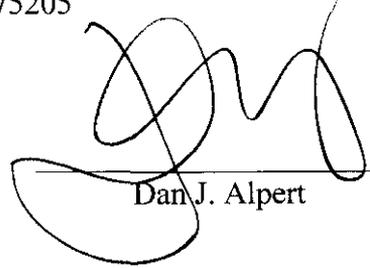
703-243-8690

*August 14, 2006*

**CERTIFICATE OF SERVICE**

I, Dan J. Alpert, hereby certify that copies of the forgoing Petition for Reconsideration are being serviced on the following:

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Dan J. Alpert