

Before the
Federal Communications Commission
 Washington, DC

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In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations)
 (Rosebud and Madisonville, Texas))
)
 Reclassification of License)
 of FM Station KNUE, Tyler, Texas)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Docket No. 05-229
 RM-10780

Filed With: **Office of the Secretary**

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

REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION

Gerald Proctor, by his attorney, hereby submits a Reply to the document entitled "Reply Comments" filed by Katherine Pyeatt in response to Report No. 2970 issued on September 20, 2006 (the "Notice"). Although characterized as "Reply Comments," Proctor is treating the document as an "opposition" to the Petition For Reconsideration under consideration by the Commission, and consequently, is filing this "Reply to Opposition to Petition for Reconsideration," as contemplated by the Notice. With respect thereto, the following is stated:

As the Commission reasoned in *Chester, Shasta Lake City, Alturas, CA*, et al., 13 FCC Rcd 8549, ¶ 16 (Policy and Rules 1998):

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

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agency resources that would be necessary to process a second petition for rulemaking filed upon initial dismissal." 918 F. 2d at 963.

Although Katherine Pyeatt suggests that she is a "party" who will be "prejudiced" by grant of the Petition, she is most certainly not a party to this case. At no time did she, or anyone on her behalf, enter an appearance in this proceeding, or oppose the rulemaking proposal originally advanced by Crawford. In fact, her attempt, at this late date, to "object to the modification of her outstanding construction permit application" itself reflects a late-filed attempt to file comments in this proceeding for which no leave has been sought.

Again, it must be emphasized that 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 timely-filed opposition was 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 to this proceeding, and in accord with well-established Commission policy, acceptance of the expression of interest is mandated.

Also, the fact of the matter is that even *if* Pyeatt's objection were timely-filed, it would be disregarded under Commission policy. The rulemaking proposal seeking the change of coordinates for Channel 267A/Madisonville, Texas was filed on June 27, 2003. At that time, the allotment was vacant. The window for Channel 267A/Madisonville closed on August 12, 2005. Under Commission policy established in *Conflicts Between Applications and Petitions for Rule making to Amend the FM Table of Allotments ("Conflicts")*, 7 FCC Rcd 4917 (1992), *recon. granted in part*, 8 FCC Rcd 4743 (1993), applications for new stations or for major changes in the nonreserved FM band filed during a filing window must accommodate earlier-filed rulemaking petitions, and the allotment is only protected from rulemaking petitions upon the close of the filing window for the

allotment. This principle is illustrated in the case of *West Hurley, Rosendale and Rhinebeck, New York, and North Canaan and Sharon, Connecticut*, 17 FCC Rcd 5339 (MB 2002), in which the Commission observed that where a Petition for Rule Making was filed on December 1, 1995 which involved, in part, a then-vacant allotment, and applications subsequently were filed subsequently for the allotment on January 11, 1996:

[i]n accordance with *Conflicts*, these applications were subject to the earlier-filed...Petition for Rule Making which could eventually result in one or more of the applicants being required to amend their application to specify Channel 255A at a new transmitter site.

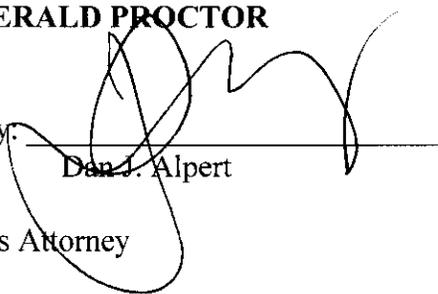
Id. at ¶ 6. That also has *always* been the case, here. The Petition was a matter of public record. Any minimal amount of research on the part of Pyeatt would have alerted her to the existence of the Petition. She therefore accepted the allotment with full actual and/or imputed knowledge of the Petition and, as a matter of law, her application has *always* been subject to the priority of the Rosebud, Texas rulemaking proceeding. In fact, by her filing for her proposed coordinates on March 10, 2006 (before the Rosebud Petition was dismissed) which conflicted with the pending rulemaking proposal, it even can be accurately stated that she filed a defective application.

In short, both procedurally and substantively, Katherine Pyeatt's "Reply Comments" pose no bar to grant of the Proctor "Petition for Reconsideration."

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

Respectfully submitted,

GERALD PROCTOR

By: 
Dan J. Alpert

His Attorney

*The Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201*

703-243-8690

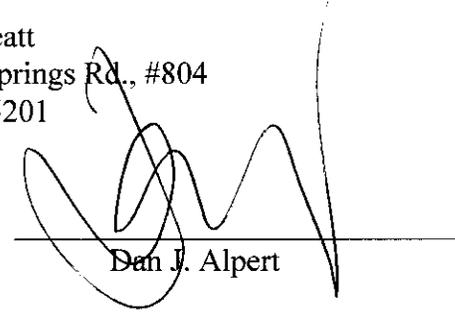
October 13, 2006

CERTIFICATE OF SERVICE

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

Charles Crawford
4553 Bordeaux Avenue
Dallas, TX 75205

Katherine Pyeatt
2215 Cedar Springs Rd., #804
Dallas, TX 75201


Dan J. Alpert