

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

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-142
FM Broadcast Stations.)	RM-11220
(Roma, Texas))	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: August 31, 2006

Released: September 5, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the petition for reconsideration submitted on behalf of La Voz Latino ("LVL"). LVL seeks reconsideration of our *Report and Order* in this proceeding, wherein we allotted Channel 278A at Roma, Texas.¹

2. In its petition for reconsideration, LVL objects to the dismissal of its counterproposal in this proceeding as untimely. LVL states that its counterproposal was delivered to 236 Massachusetts Avenue, N.E. on May 10, 2005, and should be deemed timely filed on that date, despite the fact that the "Office of the Secretary" date-stamp indicates that the document was received in that office on May 12. LVL also asserts that it intended to assist, rather than bypass, the Office of the Secretary by including under the caption of its counterproposal the following language: "To: Audio Division, Media Bureau." Finally, LVL asserts that it has been the Commission's practice in allotment and other proceedings to accept as timely filed documents directed to various bureaus and divisions within the Commission, rather than to the Office of the Secretary.

3. We find LVL's arguments to be without merit. Section 1.7 of the Commission's rules provides that documents are deemed filed upon receipt at the designated location, "[u]nless otherwise provided in this Title [Title 47 of the Code of Federal Regulations], by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority" [emphasis added].² Prior to the date on which LVL submitted its counterproposal, public notice established that allotment filings must be addressed to the Office of the Secretary, yet LVL did not comply with that requirement.

¹ *Roma, Texas*, Report and Order, DA 06-262, 71 Fed.Reg. 9267 (February 23, 2006).

² 47 C.F.R. § 1.7.

4. In the *Roma NPRM*, we emphasized that any filing not addressed to “Marlene H. Dortch, Federal Communications Commission, Office of the Secretary” will be treated as filed on the day it is received in the Office of the Secretary.³ In addition, eight days following the release of the *Roma NPRM*, the Audio Division issued a public notice reiterating that requirement for all filings in FM allotment proceedings.⁴ The *FM Allotment Public Notice* further specified that “[t]he first page and cover sheet of each filing must indicate ‘To: Office of the Secretary,’” and that “[i]ncorrectly addressed filings will be treated as having been filed on the receipt date shown on the official ‘Office of the Secretary’ date stamp.” Both the *FM Allotment Public Notice* and the *Roma NPRM* were released more than one month before the comment deadline applicable to LVL’s counterproposal.

5. LVL’s counterproposal, addressed “To: Audio Division, Media Bureau,” received a Bureau date stamp when it was delivered to 236 Massachusetts Avenue, N.E. on May 10, 2005. The document was not received and stamped in the Office of the Secretary until May 12, 2005, as evidenced by the official “Office of the Secretary” date stamp. We therefore find that the filing date of LVL’s counterproposal is May 12, 2005, two days after the comment deadline.

6. As for LVL’s argument that the Commission routinely accepts, and deems timely filed, documents directed to specific bureaus or divisions, the lone allotment proceeding cited undercuts rather than supports LVL’s position. In *Monument, Oregon*,⁵ we waived the filing deadline for an untimely allotment counterproposal addressed to the Bureau rather than to the Office of the Secretary. In that case, we accepted the untimely counterproposal because it was filed prior to a change in our standard notice of proposed rulemaking language to emphasize the filing requirements for submissions in FM allocation proceedings.⁶ In contrast, the *Roma NPRM* in this proceeding contains that new language, and we therefore decline to waive the filing deadline for LVL’s counterproposal.⁷ We find that LVL’s counterproposal was properly dismissed in the *Report and Order*, which allotted Channel 278A at Roma, Texas.

7. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by La Voz Latino IS DENIED.

8. This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.

³ *See Roma, Texas*, Notice of Proposed Rule Making, 20 FCC Rcd 6202 (MB 2005) (“*Roma NPRM*”), at ¶ 4.

⁴ *See Filing Requirements in FM Allotment Rulemaking Proceedings*, Public Notice, 20 FCC Rcd 7502 (MB 2005) (“*FM Allotment Public Notice*”).

⁵ *See Monument, Oregon*, Notice of Proposed Rule Making, 20 FCC Rcd 1287 (MB 2005), and Order to Show Cause, 21 FCC Rcd 3332 (MB 2006) (“*Monument OSC*”).

⁶ *Monument, OSC*, 21 FCC Rcd at 3332, n. 4.

⁷ *See* language in *Monument OSC, supra* (“This processing rule will be strictly followed”).

9. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

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