

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),)	MB Docket No. 05-112
Table of Allotments,)	RM-11185
FM Broadcast Stations)	RM-11374
(Fredericksburg, Converse, Flatonia,)	
Georgetown, Ingram, Lakeway, Lago Vista,)	
Llano, McQueen, Nolanville, San Antonio, and)	
Waco, Texas))	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-151
Table of Allotments,)	RM-11222
FM Broadcast Stations)	RM-11258
(Llano, Junction and Goldthwaite, Texas))	
)	

FILED/ACCEPTED

NOV 13 2007

Federal Communications Commission
Office of the Secretary

To: The Secretary
Attn: Chief, Audio Division

OPPOSITION TO PETITION FOR RECONSIDERATION

Radio Ranch, Ltd. ("RRL"), by its attorneys, hereby submits this Opposition to the Petition for Reconsideration filed in the instant proceeding by Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc. and Rawhide Radio, LLC (the "Joint Parties").¹ The Joint Parties seek reconsideration of the Media Bureau's decision denying the Joint Parties' rulemaking counterproposal involving numerous FM radio stations and the above-listed communities in southern Texas.² The

¹ This Opposition is timely filed as of November 13, 2007. See 72 Fed. Reg. 61129-61130 (Oct. 29, 2007).

² See *Fredericksburg, Texas et al.*, Report and Order, 22 FCC Rcd 10883 (MB 2007) ("R&O").

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Joint Parties' Reconsideration is without basis, and must therefore be denied. In support thereof, RRL states as follows.

In their Reconsideration, the Joint Parties characterize the *R&O* as the latest insult and injury in what amounts to the Joint Parties' seven-year raw deal before the Commission. The Joint Parties rehash a number of purported errors and inconsistencies on the part of the Bureau, starting with the Bureau's rejection of the Joint Parties' counterproposal in MM Docket No. 00-148,³ through the Bureau's rejection of the Joint Parties' similar counterproposal in the instant proceeding. The Joint Parties' Counterproposal in the instant proceeding is, at bottom, another attempt by the Joint Parties to undo the Bureau's denial of their Counterproposal in MM Docket No. 00-148. Specifically, the Joint Parties seek to regain cut-off rights dating back to their 2000 Counterproposal, so that other parties must protect the Joint Parties' Counterproposal, and the Joint Parties face no obligations to protect the proposals and applications of others. The Bureau denied the Joint Parties' Counterproposal in the *R&O* for failing to protect the construction permit of Station KHLB(FM), Burnet, Texas (File No. BPH-20030902ADU). The Joint Parties now argue that the Bureau's decision in the *R&O* simply repeats and compounds its earlier mistake in MM Docket No. 00-148 and should therefore be reversed.

The Joint Parties' claims are wholly without basis. For all of the noise the Joint Parties make in the Reconsideration, they only put forward two claims that are in anyway substantive. First, they repeat their previously asserted claim that the Bureau should have treated the Joint Parties' Counterproposal in MM Docket No. 00-148 as a separate

³ See *Quanah, Texas, et al.*, 18 FCC Rcd 9495 (MB 2003), *aff'd Memorandum Opinion and Order*, 19 FCC Rcd 7159 ("MO&O"), *app. for review pending*.

petition and issued a Notice of Proposed Rulemaking.⁴ The Bureau has already considered and correctly rejected this claim and need not reconsider it again now.

In MM Docket No. 00-148, the Joint Parties' Counterproposal was deemed defective because of a short-spacing problem, and the Joint Parties' attempt to resolve the short-spacing problem ran afoul of the Commission's expression of interest provisions in Section 1.420(j) of the Commission's Rules.⁵ Thus, despite the Joint Parties' repeated claims in the Reconsideration that their proposal was "technically acceptable," the Joint Parties' proposal was determined to be defective as a matter of Commission record. Implicitly acknowledging this, the Joint Parties insist that the Bureau should have bifurcated the Joint Parties' Counterproposal, dismissed the defective part and considered the acceptable part as a separate rulemaking petition.

However, as the Bureau stated in the *MO&O*, "it was not incumbent upon the staff to determine which portion of the counterproposal could be considered in a separate *Notice of Proposed Rulemaking* or, on its own motion, bifurcate the Counterproposal."⁶ As for the cases cited by the Joint Parties in support their claim that the Bureau's standard practices required it to bifurcate the Joint Parties' Counterproposal, the Bureau already distinguished those cases in the *MO&O*:

Unlike the Joint [Parties'] defective counterproposal in this proceeding, the counterproposals in those cases [cited by the Joint Parties] involved proposals in technical compliance with our rules. We did not have to determine which portion of the counterproposal was technically acceptable and if the counterproponent wished to pursue a portion of its counterproposal.⁷

⁴ See Reconsideration at 3.

⁵ See *MO&O*, 19 FCC Rcd at 7160, ¶ 4.

⁶ *Id.* at 7162, ¶ 11.

⁷ *Id.* In the *MO&O*, the Bureau expressly distinguishes a number of cases cited by the Joint Parties, including *Noblesville, Indianapolis and Fisher, Indiana*, 18 FCC Rcd

~~The Joint Parties' claim that the Bureau departed from standard practice is clearly~~ unfounded. As demonstrated in the *MO&O*, the Bureau properly rejected the Joint Parties' counterproposal. The Commission permits reconsideration only if a petition relies on new facts, changed circumstances, or material errors or omissions in the underlying decision. See *Sandab Communications Limited Partnership II*, 13 FCC Rcd 14413 (1998). The Joint Parties first claim plainly fails to meet this standard.

The Joint Parties second claim does not fare any better. The Joint Parties' attempt to cast doubt on the applicability of *Auburn, Alabama et al*⁸ to the instant proceeding. In *Auburn*, the Bureau articulated its policy of allowing proposals to proceed based on Commission actions that are effective but not final. Since the *Auburn* decision, the Bureau has decided a number of cases in which it has granted proposals, but conditioned the grant upon favorable resolution or completion of the "effective but not final" action in question.

The Joint Parties half-heartedly try to argue that *Auburn* should not apply in this proceeding because MM Docket No. 00-148 commenced prior to the *Auburn* decision and because *Auburn* involved an "effective but not final" grant whereas the instant matter involves a non-final denial. These arguments are nonstarters. *Auburn* was decided well before the Joint Parties submitted the instant counterproposal, not after. The Joint Parties attempt once again to back date their proposal to the original MM Docket No. 00-148 counterproposal. Once again, that effort is wholly without basis. Further, the Joint

11039 (MB 2003), *Saratoga, Green River, Big Piney and La Barge, Wyoming*, 15 FCC Rcd 10358 (MMB, 2000), and *Oakdale and Campiti, Louisiana*, 7 FCC Rcd 1033 (MMB 1992).

⁸ 18 FCC Rcd 10333 (MB 2003).

Parties' distinction between effective but not final grants and denials has no teeth, given the Bureau's practice in both contexts of conditioning subsequent grants on appropriate outcomes in the effective but not final proceeding. In other words, every party that has moved forward with a station modification or an allotment proposal conditioned on the final denial of the Joint Parties' application for review in MM Docket No. 00-148 has done so at its own risk, knowing that, in the event the Commission reverses the Bureau's decision on review, the Joint Parties' cut-off rights will be restored. Thus, the Joint Parties have not somehow been prejudiced or compromised by the Bureau's reliance upon *Auburn* in the instant proceeding, but have in fact been afforded the same rights as similarly situated parties.

In sum, the Joint Parties tried to game the system in MM Docket No. 00-148, that attempt failed, and the Joint Parties have found themselves fenced in by the very system they tried to exploit. In the *R&O*, as in the *MO&O* before it, the Bureau clearly recognized the Joint Parties' angle – attempting to fix an old label on a new package to get the protection afforded a prior-filed application – and soundly rejected it. The Joint Parties' attempt to manipulate the Commission's Rules must be rejected once again. The Reconsideration is without basis, and should therefore be denied.

WHEREFORE, Radio Ranch, Ltd. respectfully requests that the Media Bureau deny the Petition for Reconsideration filed by the Joint Parties.

Respectfully submitted,

RADIO RANCH, LTD.

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Dated: November 13, 2007

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 13th day of November, 2007, a copy of the foregoing **Opposition to Petition for Reconsideration** upon the following parties by first-class mail, postage pre-paid:

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