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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	MB Docket No. 07-279
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments	)	
FM Broadcast Stations	)	
Iola, Texas	)	RM-11411
Buffalo, Texas	)	RM-11422
Madisonville, Texas	)	RM-11423

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To: Marlene H. Dortch, Secretary
Office of The Secretary,
Federal Communications Commission

REPLY COMMENTS

Roy E. Henderson (hereinafter "Henderson"), by his counsel, herewith files his Reply Comments in response to the Public Notice Report No. 2859, as issued in this proceeding on April 2, 2008, and, as more fully set forth below, reaffirms his commitment as expressed in his "Comments and Counterproposal" as filed February 11, 2008, and for the reasons as set forth, below submits that adoption of the Henderson proposal for a new allocation in Buffalo, Texas, and denial of the original proposal by Charles Crawford for Iola, Texas, and of a conflicting proposal by Katharine Pyeatt (hereinafter "Pyeatt") for a requested upgrade of her construction permit at Madisonville, Texas. In support whereof, the following is submitted:

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I. DISCUSSION OF THE PROCEEDING

The proceeding presently includes three parties as follow:

A. The Charles Crawford Petition for Iola.

The first party is Charles Crawford who proposed a new allotment for Iola, Texas. That proposal was included in a Notice of Proposed Rulemaking (DA 07-5037, released December 21, 2007) which requested Comments on the proposal, specifically noting that the proponent of the proposal was expected to file Comments restating its position or interest in, intention to apply for, and building, the requested new station and that "failure to file may lead to denial of the request". According to FCC records, Crawford did NOT file any Comments of any kind, did not reaffirm his interest or commitment in any way, and thus, under well-settled FCC policy (See, for example, Lost Cabin and Arapahoe, Wyoming, DA 05-308 (2005) the original Crawford proposal for Iola should be dismissed and given no further consideration in this proceeding.

B. The Henderson Petition for Buffalo, Texas.

The second party is Roy E. Henderson who filed a Comments and Counterproposal in response to the original NPR, and proposed the allotment of new channel 299A for a new first commercial

transmission service 1/ in Buffalo. At that time, Henderson also filed an application form 301 for a construction permit to build and operate the new station in Buffalo as requested in his petition, and confirmed that if that channel were in fact allotted by the Commission, that Henderson would then proceed to participate in the auction for that channel and, if selected as the permittee, to then proceed to build and operate that new station, on that requested channel, in Buffalo, Texas, and each and every part of that representation and commitment is specifically reaffirmed here.

As noted in his original Comments and Counterproposal, Henderson argued that his proposal was, on its face, far superior to the original proposal for Iola, and that adoption of the Henderson proposal would clearly be in the public interest and consistent with the priorities considered by the Commission in such cases. Since there was a second Counterproposal, as filed by Katherine Pyeatt on February 11, 2008, it is now also necessary to compare the Henderson proposal for Buffalo with the Pyeatt proposal to upgrade her construction permit at Madisonville, Texas, and we will discuss the Pyeatt proposal below:

1/ At the time that Henderson filed, there was no transmission service of any kind located in Buffalo, a city of almost 2,000 persons, but shortly thereafter, the Commission granted a construction permit for a new noncommercial FM station on reserved channel 214 in Buffalo, with present construction plans and schedule presently unknown. See Factual Update filed by Henderson February 15, 2008.

C. The Pyeatt Petition to Upgrade Her *Station in Madisonville, Texas.*

First, a small correction in what was stated in the Pyeatt petition: Starting in the first paragraph Pyeatt referred to herself as "the licensee" of radio station KKLB (FM), then described as "licensed to operate on channel 267A in Madisonville". In reality, Pyeatt was an applicant for a new FM station in Madisonville, Texas, (BNPH-20060310ACN) and the Commission granted her application there on January 11, 2008, which was approximately 21 days after the NPR was issued for Iola in this proceeding. So when Pyeatt filed her petition on February 11, 2008, she was requesting authorization to abandon the channel 267A that she had requested in her application and which she had held for a grand total of 30 days, in favor of new channel 299C3, and a new transmitter site, all of which was indeed in conflict with the Iola proposal. Although this may seem somewhat "unusual" in its timing, there does not seem to be any prohibition in making that request and we will assume for now that it can be done. So much for the easy part.

Reference to the Pyeatt petition, reveals that she not only proposed to initiate a change in conflict with the Iola NPR, but also to propose taking control of the channel she was seeking to abandon in Madisonville and reallotting that channel to the suggested community of "Normangee, Texas". Her proposal was for the new allotment of channel 267A to Normangee after it was deleted from Madisonville as she had requested, and all would be

included as part of her counterproposal in this proceeding. And there is the rub.

1. Disqualifying Deficiencies in the Pyeatt Proposal

There are several serious defects in the Pyeatt proposal and the first part of the analyses is to simply determine who is filing what, and for what purpose. Upon examination, it appears that Pyeatt, as holder of a new construction permit in Madisonville on channel 267 wishes to change to channel 299, and since that would be in conflict with the original Iola proposal as filed, and now abandoned, by Mr. Crawford, it appears that she could make that request. But she did not stop there.

In apparent recognition that simply using channel 299 as a replacement for her existing channel 267 would be of pretty low significance in the FCC's priority list for evaluating proposed FM channel allotments, Pyeatt then added the additional part of her proposal, that being to then take the extra step of then allotting her abandoned channel 267 to the community of Normangee as a first service there.

The problem with such an approach is that the second proposal for the allotment at Normangee has no nexus whatsoever to the original NPR OR with Pyeatt's proposed channel change at Madisonville, which (if authorized by the Commission) could be fully implemented without any further allotment or action of any kind necessary or required at Normangee.

Approaching the Pyeatt proposal from the other direction, i.e. that we try to look at it first as a proposal for a first service at Normangee that would then require the change of channels at Madisonville, we encounter even more defects. First of all, proposing a new allotment at Normangee is not, in itself, mutually exclusive or in any kind of conflict whatsoever with the Iola NPR, but even assuming for a moment arguendo that we could get past that very formidable obstacle to filing, and consider it as a counterproposal by Pyeatt for Normangee, then it would also be fatally defective since such a proposal would then require not only a channel change but also a transmitter change at Madisonville to operate on the new channel and the Pyeatt counterproposal did not include a consent from the Madisonville permittee to make such a change, and such a consent is required. In re Claremore, Ok, et al 4 FCC Rcd 2181 (1989).

Further, a proposed change of the assigned channel at Madisonville would require either a formal consent by the Permittee filed with the counterproposal, OR a request for a show cause order to issue, with the Normangee proponent also agreeing to reimburse all out-of-pocket costs for the change at Madisonville, and neither of these requirements were met. It would seem that the simple answer as to why they were ignored is that the only real purpose of Pyeatt in this proceeding is to seek to upgrade her existing permit in Madisonville by the requested change of channels there, and that the second part of her proposal to then take her abandoned channel to Normangee was in the form of a "sweetener", albeit an irrelevant and

unacceptable appendage in this proceeding, to seek to bolster her weak case to use channel 299 to simply replace her existing channel 267 at Madisonville.

So, seen here as a proposal for Normangee that would require a channel change and transmitter change at Madisonville, it is patently deficient and defective for the reasons as set forth above. On the other hand, seen as a proposal by the Madisonville permit holder to initiate a change of channels there, it then goes on to include a totally non-related, non-required, proposal to make a new allotment at Normangee, clearly and patently irrelevant to any part of this proceeding and equally unacceptable for consideration in this Docket.

So, no matter how it is approached, the Pyeatt proposal is contrary to Commission rules which govern the receipt and consideration of counterproposals and it should be dismissed as such. See Susquehanna and Hallstead, PA, 15 FCC Rcd 24160 (2000), and Broken Arrow, OK, et al, 3 FCC Rcd 6507 (1988).

2. The Pyeatt Proposal Is Defective and Should be Dismissed.

There is nothing in the Pyeatt petition which would indicate that allotment of channel 267A to Normangee is in any way in conflict with any element of the original proposal for Iola, OR to Pyeatt's proposal to delete the channel from its present allotment at Madisonville, and the attached Engineering Statement confirms that fact. Put simply, Pyeatt has no "property right" to the channel as originally assigned to her at Madisonville, and if

she decides to seek its removal in favor of a channel she would rather have there, then that is that. In that case, she would have no further right to where that abandoned channel might then be allocated, whether to Normangee or Atlantic City, or any place else. All that she may do in this proceeding as to that channel is to request that it be deleted from Madisonville and it ends there. Seeking a new home for the deleted channel is not a proper consideration in this proceeding since it is not in conflict with the original proposal in any way, nor is it necessary or required for implementation of the new proposal by Pyeatt in Madisonville.

That being the case, we would submit that the Pyeatt proposal as submitted is flawed and deficient in containing parts that are not in conflict with any element of the original NPR and, as such, that the Pyeatt proposal is procedurally deficient and should be dismissed from this proceeding. Short of that, if the Commission did not dismiss the Pyeatt proposal in toto, then it would appear clear that it would have to at least dismiss the portion that presumes to place channel 267A in a new community that is not in conflict with any element of the NPR or of the proposed upgrade of Pyeatt's construction permit in Madisonville.

II. IN ANY FINAL ANALYSES, THE HENDERSON PROPOSAL FOR BUFFALO IS SUPERIOR AND SHOULD BE PREFERRED AND ADOPTED

If the Pyeatt petition is dismissed in full, as filed, due to its inclusion and reliance upon an unallowable element, then the Henderson proposal would stand by itself and, as previously shown, should be adopted in the public interest. If arguendo, the

Pyeatt petition for Madisonville were to receive any further consideration at all in this proceeding, with the improper and unallowable additional proposal for allotment of channel 267A to Normangee deleted 2/ it again must fail upon the merits since the proposed change of channels at the existing construction permit at Madisonville would not be comparable to the public interest benefits of the allotment of new channel 299A as a first commercial radio service to the town of Buffalo, Texas, with a population of close to 2,000 persons and with no existing local radio service at all.3/

III. CONCLUSION

Wherefore, it is respectfully submitted that the original proposal for Iola has not been supported and must be dismissed without further consideration; that the proposal by Pyeatt for Madisonville is procedurally flawed with a portion not in conflict in any way with the NPR, nor required to implement the part of the proposal which is in conflict with the NPR, and should therefore be dismissed as not properly filed or considered as a counterproposal in this proceeding, or in the alternative, that the improper portion relating to a proposed new allotment to Normangee, Texas, not in conflict with this proceeding, be

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2/ It is noted here that if Pyeatt really wants to pursue an allotment of channel 267A to Normangee, she may easily make such a request in a new rulemaking petition to do just that, at Normangee or any other community of her choosing, to stand or fall upon its own merits. It is simply improper for Pyeatt to seek to attach such a proposal to THIS proceeding where it has no proper place or consideration.

3/ See footnote 1, supra.

dismissed and given no consideration; and that the Henderson proposal for a new allotment of channel 299A as a new first commercial service in Buffalo, Texas, is in the public interest and serves the highest priorities of the Commission's FM Allotment priorities for new allotments and new services, and should therefore be adopted in the public interest.

Respectfully submitted,

ROY E. HENDERSON

by _____
Robert J. Buenzle
His Counsel

Law Offices
Robert J.Buenzle
11710 Plaza America Drive
Suite 2000
Reston, Virginia 20190
(703) 430-6751

April 16, 2008

Roy E. Henderson
1610 Woodstead Court
The Woodlands, TX 77380

Reply Comments
MB Docket 07-279
April 12, 2008

Engineering Statement

This firm has been retained by Roy E. Henderson, ("Henderson"), to prepare this Engineering Statement in support of his Reply Comments in this proceeding.

On December 21, 2007, at the request of Charles Crawford, the Commission issued a Notice of Proposed Rulemaking, ("NPRM"), which sought comments on the proposed allotment of FM Channel 299A to the community of Iola, Texas. In response to that Notice, two parties filed[1] Comments and Counterproposals, both of which presented alternate proposals to the assignment of FM Channel 299A to Iola, Texas.

1. Roy E. Henderson proposed that the Commission allot FM Channel 299A to the community of Buffalo, Texas and presented data that showed that the requested assignment of FM Channel 299A to Buffalo, Texas was a superior proposal to the originally proposed assignment of FM Channel 299A to Iola, Texas[2].
2. Katherine Pyeatt, permittee[3] of Radio Station KKLB(FM), Facility ID 166036, filed a Counterproposal whose purpose is to "add a new first service to the community of Normangee, TX and to upgrade the construction permit of station KKLB, currently

[1] The original proponent, Charles Crawford did not file an expression of continuing interest in the allotment of FM Channel 299A to Iola, Texas as is required by the Commission, and no other comments containing an expression of interest in the proposed allotment of FM Channel 299A at Iola, Texas are now on file with the Commission in this proceeding.
[2] Henderson also filed a factual update in this proceeding on February 15, 2008.
[3] In the Pyeatt Counterproposal it is claimed that the proponent is the licensee of Radio Station KKLB(FM), however, that is incorrect. The Commission records reflect that a Construction Permit for FM Channel 267A at Madisonville, Texas was issued to Katherine Pyeatt on January 11, 2008, Facility ID 166036, (FCC File No. BNPH-20060310ACN). Commission records do not show any license application on file for this facility.

licensed, (sic), to operate on channel 267A in Madisonville, to operate on channel 299C3 from a new transmitter site location[4]..."

No other comments were received, according to the Commission's files, regarding the proposed allotment of FM Channel 299A to Iola, Texas as proposed by Charles Crawford in this Docket.

DISCUSSION

The Comments and Counterproposal of Roy E. Henderson seeking the allotment of FM Channel 299A to the more deserving community of Buffalo, Texas as opposed to the originally proposed assignment of FM Channel 299A to Iola, Texas[5] is in direct conflict with Iola, Texas allotment as contained in Notice of Proposed Rulemaking. Henderson restates here that he will apply for and construct this facility if he is the winning bidder at auction.

The proposal of Katherine Pyeatt is somewhat confusing in that she is seeking to a) augment the service that is presently authorized by her Construction Permit by abandoning FM Channel 267A and requesting that her Permit be amended to specify operation on FM Channel 299C3 at a different transmitter site then b) have her abandoned FM Channel 267A assigned to Normangee, Texas as a first local service.

It is well established that a Counterproposal filed in a rulemaking proceeding must be in conflict with a published Notice of Proposed Rulemaking to be acceptable and that any proposal that does not conflict with the NPRM will be dismissed. The Pyeatt Counterproposal is defective in that regard because it proposes that FM Channel 267A be assigned to Normangee, Texas[6] and there is no conflict whatsoever between the Pyeatt proposal and the

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[4] Katherine Pyeatt, MM Docket 07-279, Counterproposal, February 11, 2008 at Paragraph 2.

[5] No party filed an expression of interest in the proposed allotment of FM Channel 299A to Iola, Texas and the Commission has consistently held that, in the absence of an expression of interest on file by the Comment date, a channel will not be added to the FM Table of Allotments.

[6] As permittee, Pyeatt can a) propose that its Construction Permit be amended to specify operation on FM Channel 267A at Normangee, Texas or that the Construction Permit be modified to specify operation on FM Channel 299C3 at Madisonville, Texas, ***but not both***.

originally published NPRM to assign FM Channel 299A to Iola, Texas. As Pyeatt clearly states[7] the "essential purpose of this counterproposal is to add a new first service to the community of Normangee, TX..." and this can be simply done in the normal manner by filing FCC Form 301 to specify a new community of license. This request would not be in conflict with the proposed allotment of FM Channel 299A to Iola, Texas and it would not require a rulemaking proceeding because it is not in conflict with the NPRM proposing the allotment of FM Channel 299A to Iola, Texas.

On the other hand, the Pyeatt proposal could be read[8] as "the essential purpose of this counterproposal is to....upgrade the construction permit for station KKLB, currently licensed, (sic), to operate on channel 267A to Madisonville, to operate on channel 299C3 from a new transmitter site" then that proposal is in conflict with the proposed allotment of FM Channel 299A to Iola, Texas and the proposal would be in conflict with the originally published NPRM.

Obviously, Pyeatt cannot propose to ***both*** abandon Channel 267A at Madisonville, Texas ***and*** propose assignment of that abandoned channel to Normangee, Texas while simultaneously proposing that the Construction Permit for FM Channel 267A at Madisonville, Texas be modified to specify operation on FM Channel 299C3.

CONCLUSION

The Counterproposal of Katherine Pyeatt proposes the allotment of FM Chanel 267A to Normangee, Texas and this proposed allotment is clearly not in conflict with the allotment of FM Channel 299A to Iola, Texas as was proposed in the NPRM. Since the Counterproposal of Pyeatt is defective[9], it must be dismissed as it presents a proposal that is not in conflict with the proposed allotment of FM Channel 299A at Iola, Texas.

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[7] Footnote 2, supra.
[8] Footnote 2, supra.
[9] It has long been Commission policy that a Counterproposal must be technically and legally correct when filed in order to be considered in a rulemaking proceeding.

The proposal to add FM Channel 299A at Iola, Texas must be dismissed because neither the proponent nor any other party filed any continuing interest in its assignment to Iola, Texas.

The proposal of Roy Henderson seeking the allotment of FM Channel 299A to Buffalo, Texas fully complies with the Commission's Rules and it should be granted.

CERTIFICATION

This engineering statement has been prepared by the undersigned and is true and correct to the best of his knowledge and belief, and is submitted in good faith. My qualifications are a matter of record before the Commission.

The undersigned is aware that this document is being filed with the Federal Communications Commission in MB Docket in connection with Comments and Counterproposal filed by Roy E. Henderson in MB Docket 07-279 and the undersigned hereby consents to its use for that purpose.

Dated this 12th day of April 2008.

Respectfully,

F. W. Hannel, PE

F. W. Hannel & Associates
10733 East Butherus Drive
Scottsdale, AZ 85255
(480) 585-7475
Fax (815) 327-9559
http://www.fwhannel.com

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 16th day of April, 2008, upon the following:

John A. Karousos, Esq., Assistant Chief
Audio Division, Media Bureau
Federal Communications Commission
Portals II, Room 2-A465
445 12th Street SW
Washington, D.C. 20554

Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205
Iola Petitioner

Katherine Pyeatt
2215 Cedar Springs Rd., #1910
Dallas, Texas 75219 75201
Madisonville Petitioner

Gene Bechtel, Esq.
Suite 600
1050 17th Street N.W.
Washington, DC 20036
Counsel for Charles Crawford,
Iola Petitioner

Gene Bechtel, Esq.
Suite 600
1050 17th Street N.W.
Washington, DC 20036
Counsel for Katherine Pyeatt,
Madisonville, Petitioner

Robert J. Buenzle