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FCC Mail Room

August 12, 2008

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Petition for Rule Making
Batesville, Texas (Channel 250A)

Dear Ms. Dortch:

Enclosed is an original and four (4) copies of my Petition for Rule Making proposing to add Channel 250A at Batesville, Texas.

Respectfully submitted,

Katherine Pyeatt

Katherine Pyeatt
2215 Cedar Springs Rd., #1910
Dallas, Texas 75201
(214) 991-9363

Batesville Cover

No. of Copies rec'd 0+4
List ABCDE
MB 08-91

Received & Inspected

AUG 12 2008

FCC Mail Room

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

In the Matter of	)	
	)	
Amendment of 73.202(b)	)	MB Docket No.
FM Table of Allotments	)	RM-
FM Broadcast Stations	)	
(Batesville, Texas)	)	

To: Office of the Secretary
Attn: Chief, Audio Division,
Media Bureau

PETITION FOR RULE MAKING

Katherine Pyeatt hereby requests the allotment of Channel 250A to Batesville, Texas,[1] as that community's first local aural transmission service. The following summarizes the changes requested in this Petition:

Community	Present	Proposed
Batesville, TX	----	250A

Petitioner respectfully submits that the public interest would be served by allocating Channel 250A to Batesville, Texas as that community's first local aural

[1] Pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) *("Streamlining R&O")*, Katherine Pyeatt is contemporaneously filing a Form 301 application for this proposal along with the requisite filing fee. Should this channel be allotted to Batesville, Texas, Katherine Pyeatt hereby states that she will construct the facility specified in the Form 301.

transmission service. Batesville, Texas is a census-designated place (CDP) in Zavala County. As of the 2000 census, there were 1,298 people residing in the community. Batesville has its own zip code, 78829, its own post office, volunteer fire department[2] and the Batesville Elementary school[3] with 230 students annually from Pre-K - 8. In addition to the two story class room building, the school campus includes a large spacious gymnasium building and a separate office and library. Like other "communities" to which the FCC has allotted a "first local aural service," Batesville also has a local church, the First Baptist Church of Batesville.[4] According to the Texas Almanac 2004-2005, 20 businesses in Batesville have been given a credit rating by Dun & Bradstreet.

Batesville is a community that is certainly deserving of a first FM service. "Local radio stations play an important role in their communities, providing local news, information and entertainment to residents, and generally serving as good corporate citizens in the local community life. This is particularly true in smaller towns where the radio stations are limited in number. Yet there are still

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[2] Batesville Volunteer Fire Department, PO Box 317, Batesville, TX 78829. (830) 376-4216, John Simpson, Fire Chief.
[3] Batesville Elementary School, PO Box 67, Batesville, TX 78829. *830) 376-4221.
[4] First Baptist Church of Batesville, Bates Rd & Zavala St., Batesville, TX 78829. (830) 376-4557.

rural areas of our country that do not have even a local radio station."[5] The proposed channel 250A will provide additional diversity and an outlet for local self-expression to Batesville residents and therefore is in the public interest.

Channel 250A/ Batesville, Texas

Attached hereto is a channel study confirming that Channel 250A can be allocated to Batesville, Texas, consistent with Section 73.207 of the Commission's Rules[6] with respect to all existing and proposed domestic allotments and facilities. (See, Attachment A) A 70 dBu signal can be provided to Batesville from the proposed reference coordinates. Note: The petition to add Channel 250A to Batesville, contained in MM Docket No. 01-130, was dismissed per Memorandum Opinion and Order, released January 18, 2008. (See, Attachment B) Also note, the counterproposal to add Channel 249C1 to Converse, TX, contained in MM Docket No. 00-148/ Quanah, TX, was dismissed per Report & Order, DA 03-1533, released May 8, 2003. (See, Attachment C) And finally, the counterproposal to add Channel 249C1 to Converse, TX, contained in MB Docket No. 05-112/ Fredericksburg, TX, was

[5] Statement of Commissioner Kevin J. Martin, MM & O, MM Docket 99-240, released May 20, 2004.
[6] 47 C.F.R. 73.207.

dismissed per Report & Order, released June 15, 2007.

(See, Attachment D)

Reference coordinates for Channel 250A at Batesville, Texas are:

28 58 27 N
99 30 12 W

I hereby certify that should this petition be granted and Channel 250A is allotted to Batesville, Texas as specified in my petition and in my Form 301 for this channel which I have simultaneously electronically filed with this Petition for Rule Making along with the requisite Form 301 filing fee, I will participate in the auction for the channel.

The factual information provided in these Comments is correct and true to the best of my knowledge.

Respectfully submitted,

Katherine Pyeatt
2215 Cedar Springs Rd., #1910
Dallas, Texas 75201
(214) 991-9363

cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite 600, 1050 17th Street, N.W., Washington, D.C. 20036, Telephone (301) 340-1651, telecopier (301) 340-6811, attorney for Katherine Pyeatt. It is requested that the Commission and any parties who may file pleadings in the captioned matter serve copies to Mr. Bechtel as well as Ms. Pyeatt.

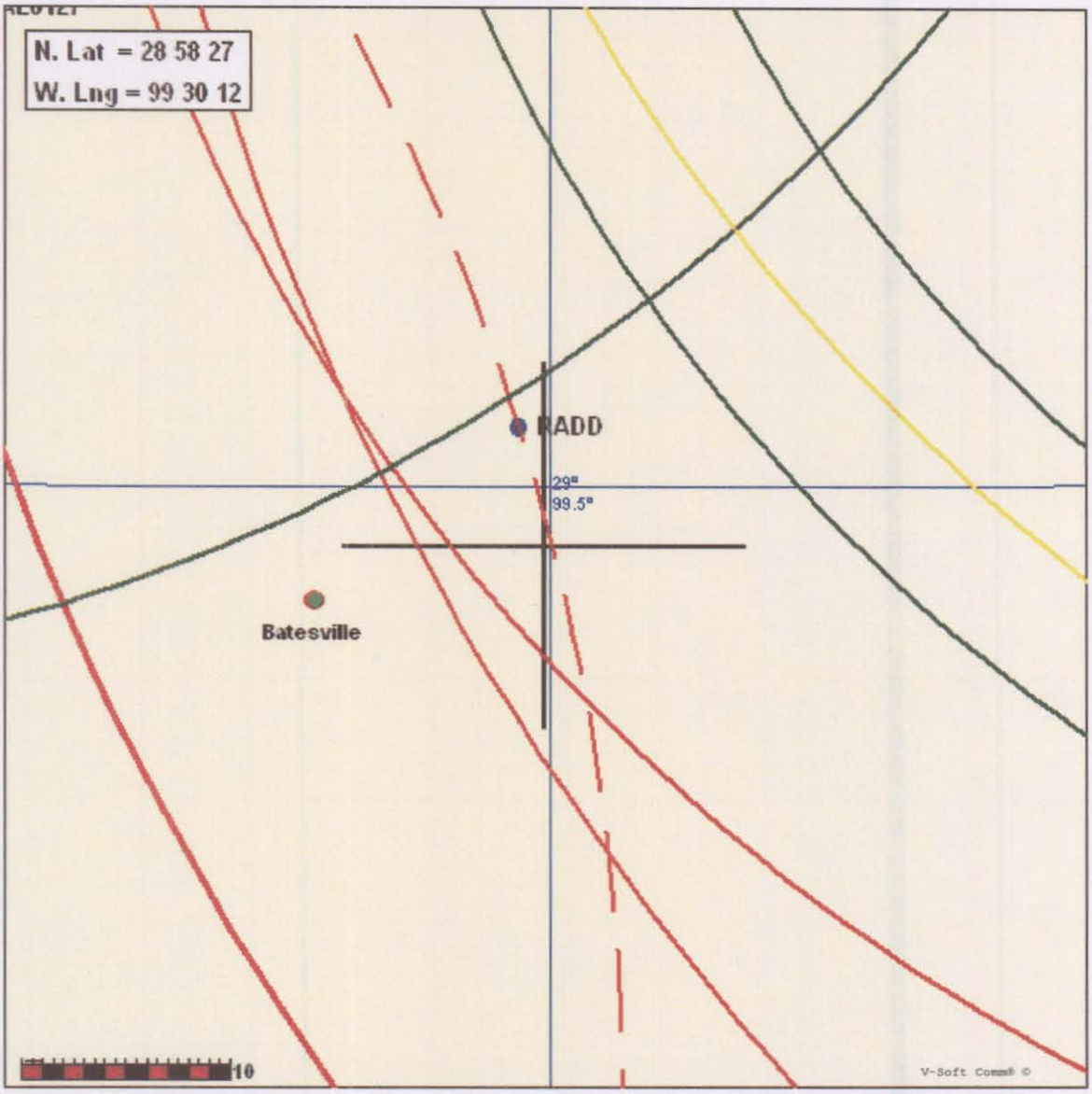
August 12, 2008

Attachment A

(Channel Study for Channel 250A at Batesville, Texas)

CH 250 A, AA, 97.9 MHz

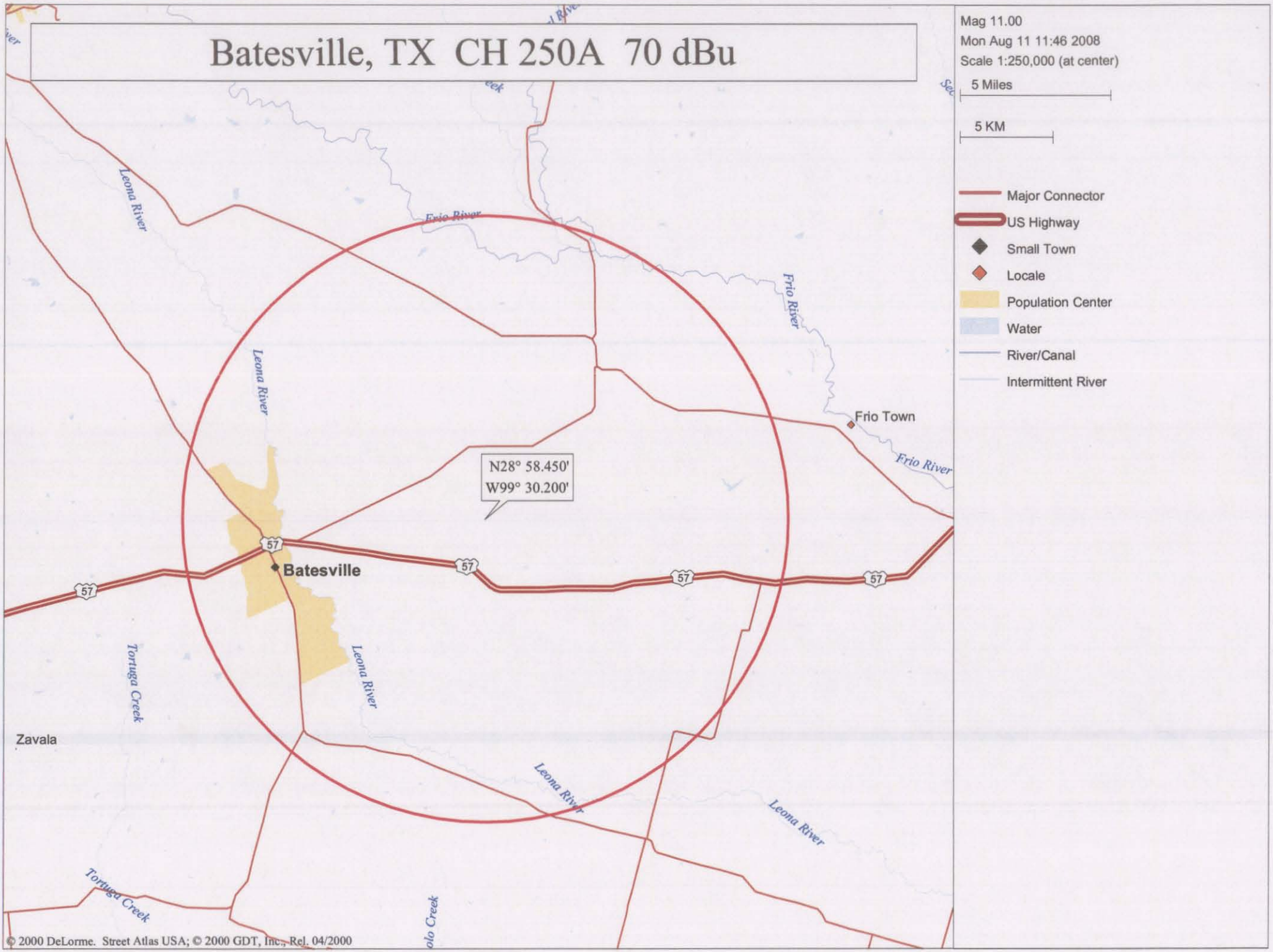
Kzia, Inc.



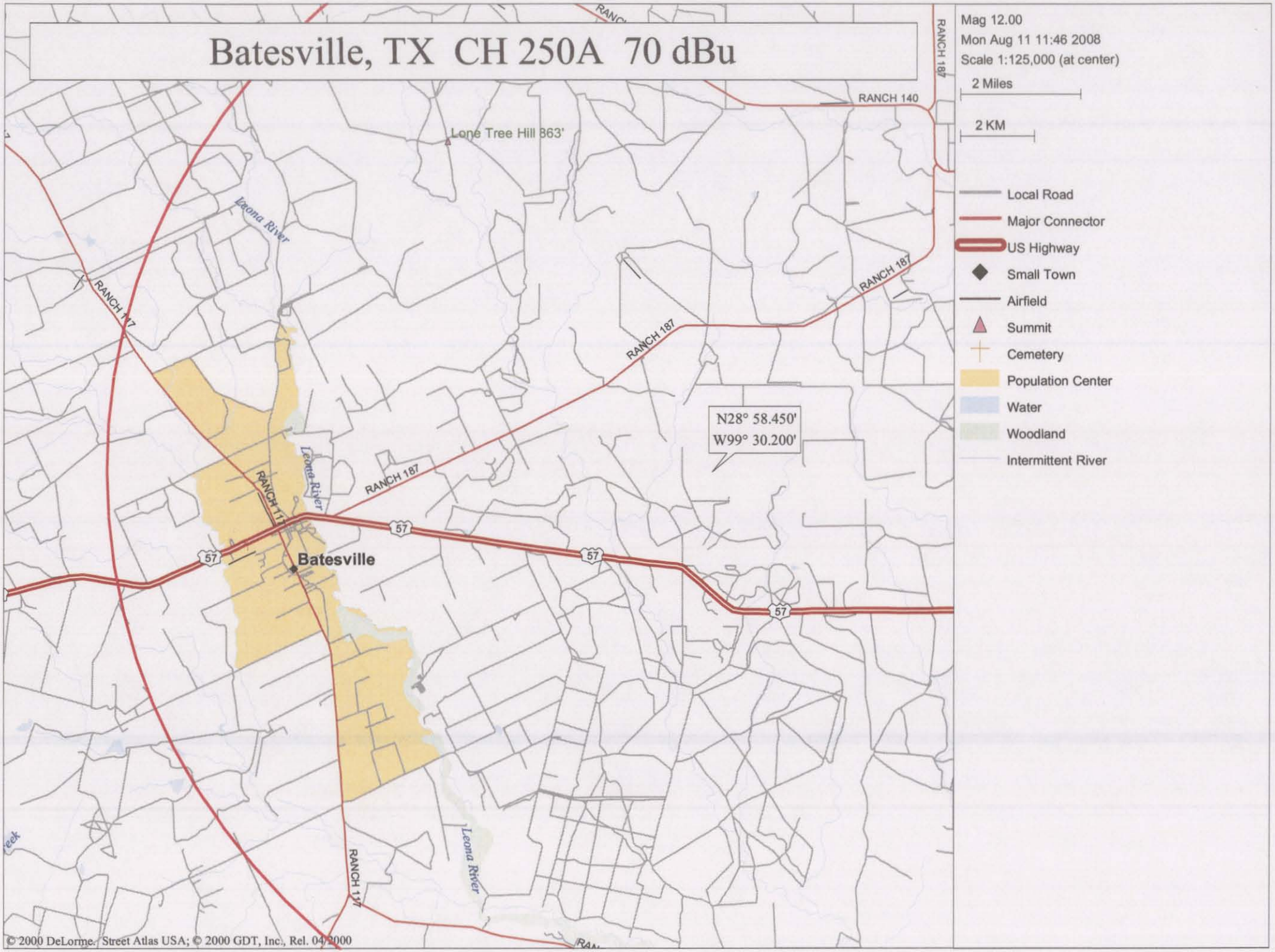
Data Date:08-05-08 Job Date:08-11-08

Call	CH#	Type	Location		Azi	D-KM	FCC	Margin
RADD	250A	ADD	Batesville	TX	347.6	5.89	115.0	-109.11
RDEL	249C1	DEL	Mcqueeney	TX	63.2	110.71	133.0	-22.29
RADD	249C1	ADD	Converse	TX	63.2	110.71	133.0	-22.29
RADD	249C1	ADD	Converse	TX	63.2	110.71	133.0	-22.29
RADD	249C1	ADD	Converse	TX	63.2	110.71	133.0	-22.29
RDEL	249C1	DEL	Mcqueeney	TX	60.8	127.60	133.0	-5.40
RDEL	247C	DEL	San Antonio	TX	50.1	91.49	95.0	-3.51
AL1191	250A	AL	Piedras Negras	CI	255.7	110.59	111.0	-0.41
AL0417	251C3	RSV	Camp Wood	TX	329.0	95.97	89.0	6.97
KAJA	247C0	LIC	San Antonio	TX	50.9	97.22	86.0	11.22
RDEL	247C	DEL	San Antonio	TX	48.9	111.92	95.0	16.92
KBBT	253C1	LIC	Schertz	TX	50.9	97.22	75.0	22.22
KRRG	251C1	LIC	Laredo	TX	180.7	161.09	133.0	28.09
AL0554	250A	VAC	George West	TX	121.8	154.65	115.0	39.65
AL8853	248C	AL	San Carlos	CI	272.9	136.19	95.0	41.19
AL6127	249C1	RSV	Mcqueeney	TX	76.2	183.95	133.0	50.95
KLTO-FM.C	249C1	CP	Mcqueeney	TX	75.7	184.38	133.0	51.38

Batesville, TX CH 250A 70 dBu



Batesville, TX CH 250A 70 dBu



Attachment B

(Memorandum Opinion & Order, MM Docket No. 01-130, released January 18, 2008, denied the proposed Channel 250A at Batesville)

FILE COPY ORIGINAL

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

JAN 2 1 2008

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-105
Table of Allotments,	)	RM-10104
FM Broadcast Stations.	)	
(Shiner, Texas)	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-130
Table of Allotments,	)	RM-10147
FM Broadcast Stations.	)	
(Batesville, Texas)	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-153
Table of Allotments,	)	RM-10169
FM Broadcast Stations.	)	
(Tilden, Texas)	)	

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 2008 **Released: January 18, 2008**

By the Commission:

1. The Commission has before it Applications for Review and Supplements filed by Charles Crawford ("Crawford") directed to the *Report and Order* in MM Docket No. 01-105[1] and the *Report and Order* in MM Docket No. 01-153.[2] Crawford has also filed Comments and a Supplement in MM Docket No. 01-130.[3] Rawhide Radio, LLC has filed an Opposition to each of the Applications for Review. In view of the fact that Crawford also has raised identical arguments in each of these proceedings, we will consider this matter in a single Memorandum Opinion and Order. For the reasons discussed below, we deny the Applications for Review. In addition, we are dismissing the underlying proposal for a Channel 250A allotment at Batesville, Texas, and terminating that proceeding (MM Docket No. 01-130).

I. BACKGROUND

2. At the request of Nation Wide Radio Stations, the *Notice of Proposed Rule Making* in MM Docket No. 00-148 (*"Quanah NPRM"*) proposed the allotment of Channel 233C3 to Quanah, Texas.[4] The date by which comments and counterproposals were due in that proceeding was October 10, 2000. In

[1] *Shiner, Texas,* Report and Order, 19 FCC Rcd 4327 (MB 2004).

[2] *Tilden, Texas,* Report and Order, 19 FCC Rcd 6112 (MB 2004).

[3] *Batesville, Texas,* Notice of Proposed Rule Making, 16 FCC Rcd 12682 (MB 2001). The Media Bureau has referred this matter to the Commission pursuant to 47 C.F.R. § 0.5(c).

[4] *Quanah, Texas,* Notice of Proposed Rule Making, 15 FCC Rcd 15809 (MMB 2000).

response to that *Notice,* five radio station licensees ("Joint Parties") jointly filed a timely Counterproposal which set forth interrelated allotment proposals and channel substitutions involving twenty-two communities in Texas and Oklahoma (the "Quanah Counterproposal").[5] Included in the Quanah Counterproposal were proposals to allot Channel 245C1 to San Antonio, Texas, Channel 249C1 to Converse, Texas, and Channel 232A to Flatonia, Texas.

3. After the comment date in MM Docket No. 00-148, Crawford filed eight Petitions for Rule Making (collectively, the "Crawford Petitions") including the three proposals captioned above. Each of the Crawford Petitions was in conflict with the Quanah Counterproposal, and thus, should have been treated as untimely filed counterproposals in MM Docket No. 00-148.[6] The staff, however, erroneously docketed the Crawford Petitions and released Notices of Proposed Rule Making because the Quanah Counterproposal was tardily entered into the FM database. The staff subsequently identified the allotment conflicts and determined that the Crawford Petitions were untimely. In this instance, the Crawford proposal for Channel 232A at Shiner conflicted with the proposal to allot Channel 232A at Flatonia, his proposal for Channel 250A at Batesville conflicted with the proposal to allot Channel 249C1 at Converse, and his proposal to allot Channel 245C3 at Tilden conflicted with the proposal to allot Channel 245C1 at San Antonio. Earlier, the staff had dismissed two of Crawford's other proposals for new allotments at Mason and Benjamin, Texas. Thereafter, the staff denied Crawford's consolidated Petition for Reconsideration of the dismissals of the Mason and Benjamin proposals.[7] We later denied an Application for Review filed by Crawford of that staff action.[8] In doing so, we rejected the Crawford argument that he did not have "reasonable notice" that the *Quanah NPRM* could potentially elicit the "humongous" twenty-two community Quanah Counterproposal that would technically preclude his proposals for allotments at communities 100 and 320 kilometers from Quanah. We also rejected his argument that he did not have adequate notice as required by Section 553 of the Administrative Procedure Act.[9] Crawford sought judicial review of the denial of the Application for Review.

4. The District of Columbia Court of Appeals for the D.C. Circuit (the "Court") affirmed our dismissal of the Mason and Benjamin proposals.[10] In that decision, the Court likewise rejected Crawford's contentions that he was not given adequate notice that the Joint Parties Counterproposal could preclude his proposals at Benjamin and Mason, and that adequate notice requires that an affected party be able to anticipate the specific preclusive result of an allotment proceeding. The Court noted that the *Quanah NPRM,* as well as our own rules, make it clear that an allotment rulemaking proceeding encompasses mutually exclusive counterproposals and that late-filed conflicting proposals would be dismissed.[11] The Court reasoned that "this put all interested parties on notice that their proposals could be precluded by *any* counterproposal - whether foreseeable or not - that was filed by the comment date in the rulemaking proceeding."[12] The Court also observed that, in addition to the Crawford proposals being precluded by the "logical outgrowth" of the *Quanah NPRM,* our dismissal of those proposals "was merely doing that which [we] announced" we would do.[13] With regard to the Mason proposal, the Court went on

[5] Section 1.420(d) of the Rules requires a counterproposal to be filed by the specified comment date in a rulemaking proceeding. 47 C.F.R. § 1.420(d).

[6] These Petitions for Rule Making were filed between April 18 and May 23, 2001.

[7] *Benjamin and Mason, Texas,* Memorandum Opinion and Order, 18 FCC Rcd 103 (MB 2003).

[8] *Benjamin and Mason, Texas,* Memorandum Opinion and Order, 19 FCC Rcd 470 (2004).

[9] 5 U.S.C. § 553(b)(3).

[10] *Crawford v. FCC,* 417 F. 3d 1289 (D.C. Cir. 2005) ("*Crawford*").

[11] *Id.* at 1296.

[12] *Id.* (emphasis in original).

[13] *Id. citing* 18 FCC Rcd at 104, n. 7, *supra.*

to state that, even if the adequate notice test required an affected party to be able to anticipate a preclusive outcome in a particular allotment proceeding, that test would be satisfied in this proceeding with respect to Mason.[14] As an illustrative example, based on the Commission's minimum distance separation of 147 miles between a Class C3 station and a Class C station, the Court noted that a Class C3 proposal at Quanah could conflict with another Class C3 proposal up to 147 miles from Quanah. In turn, this Class C3 proposal could conflict with another Class C3 proposal as far away as another 147 miles away. As such, the Court stated that the foreseeable radius of conflict arising from even such a simple proposal would be 294 miles from Quanah.

5. In his Applications for Review of the *Reports and Orders* dismissing the Shiner and Tilden Petitions for Rule Making, Crawford raises the identical adequate notice arguments that he raised earlier in the Benjamin and Mason proceedings.[15] The Supplement, filed after the Court's rejection of those arguments in *Crawford v. FCC,* contends that the Court "fashioned a benchmark for measuring" adequate notice of 294 miles from the originally proposed allotment at Quanah.[16] Shiner, Batesville and Tilden, Texas, are located between 367 and 408 miles from Quanah. For this reason, Crawford contends that the Joint Parties' Counterproposal is "not valid" and does not provide a basis to preclude his proposals at Shiner, Batesville and Tilden, Texas.[17]

II. DISCUSSION

6. We deny the Applications for Review. In his Supplements, Crawford ignores the fact that the Court concurred with our determination that the *Quanah NPRM* placed all interested parties on notice that their proposals could be precluded by any counterproposal, "whether foreseeable or not," filed by the comment date. As such, the Court agreed that the dismissal of a late-filed proposal was the logical outgrowth of the *Quanah NPRM* and that the staff was merely doing what we announced that we would do.[18] In order to avoid such preclusion, the Court reiterated our admonishments to interested parties to file their proposals as soon as they are ready to avoid the risk of being precluded.[19] Contrary to Crawford's assertion, the Court did not establish a 294-mile benchmark for determining adequate notice. Rather, it merely used the Mason proposal as an illustrative example of the preclusive impact of the FM minimum separation requirements,[20] to establish that Crawford should have known that one additional

[14] *Id.* at 1296.

[15] On review, Crawford also addressed the merits of the Joint Parties' Counterproposal filed in MM Docket No. 00-148. The Joint Parties' Counterproposal was set forth in a *Public Notice* released August 3, 2001 (Report No. 2500). Reply comments were due 15 days from the date of that *Public Notice.* Crawford's comments are both outside of the scope of this proceeding and grossly untimely. They will not be considered in this proceeding.

[16] Supplement at 1.

[17] Supplement at iii. The remaining three proposals are for allotments at Evant, Harper and Goldthwaite, Texas. These communities are located within 294 miles of Quanah and Crawford has requested dismissal of each of those proposals.

[18] The Court applied a "logical outgrowth" test to determine whether a rulemaking action was based upon adequate notice and opportunity for public participation. *See Weyerhaeuser Company v. Costle,* 590 F. 2d 1011, 1031 (D.C. Cir. 1978); *Owensboro on the Air v. United States,* 262 F. 2d 702 (D.C. Cir. 1958). *See also Small Refiner Lead Phase-Down Task Force v. EPA,* 705 F. 2d 506, 549 (D.C. Cir. 1983) ("whether the 'logical outgrowth' test is satisfied depends , in turn, on whether the affected party 'should have anticipated' the agency's final course in light of the initial notice." *Crawford, supra,* n. 10, at 1295).

[19] *See Conflicts Between Applications and Petitions for Rule Making to Amend the Table of FM Allotments,* Memorandum Opinion and Order, 8 FCC Rcd 4743, 4745 (1993) (noting that the risk of preclusion "could in large part be minimized by filing a counterproposal at the earliest possible time"); *see also Pinewood, South Carolina,* Memorandum Opinion and Order, 5 FCC Rcd 7609 (1990).

[20] *See* 47 C.F.R. § 73.207(b)(1).

Class C3 proposal 147 miles from Quanah could preclude another Class C3 proposal 147 miles from that proposal. Moreover, a counterproposal involving multiple allotment proposals could extend the area of potential preclusion well beyond 294 miles. In view of the potential for the filing of several counterproposals in a single proceeding where each of the counterproposals could specify numerous allotment proposals, we conclude that Crawford's claim of lack of adequate notice with regard to these three rulemaking petitions is without merit.

7. For the same reasons, we are also dismissing the Crawford Petition for Rule Making in MM Docket No. 01-130 which proposes a Channel 250A allotment at Batesville, Texas. We also terminate that proceeding.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, That the aforementioned Applications for Review filed by Charles Crawford ARE DENIED.

9. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Charles Crawford for a Channel 250A at Batesville, Texas (MM Docket No. 01-130) IS HEREBY DISMISSED.

10. IT IS FURTHER ORDERED, That MM Docket No. 01-105, MM Docket No. 01-130, and MM Docket No. 01-153 ARE HEREBY TERMINATED.

11. The Commission need not send a copy of this *Memorandum Opinion and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A), the Congressional Review Act, because by denying the two Applications for Review and dismissing the third rulemaking petition in this case we are not adopting any new rule which we need to report to the Congress or the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

Attachment C

(Report & Order, MM Docket No. 00-148, released May 8, 2003, denied the proposed Channel 249C1 at Converse, Texas)

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

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 00-148
FM Broadcast Stations.	)	RM-9939
(Quanah, Archer City, Converse, Flatonia,	)	RM-10198
Georgetown, Ingram, Keller, Knox City,	)	
Lakeway, Lago Vista, Llano, McQueeney,	)	
Nolanville, San Antonio, Seymour, Waco and	)	
Wellington, Texas, and Ardmore, Durant,	)	
Elk City, Healdton, Lawton and Purcell,		
Oklahoma.)		

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 7, 2003 **Released: May 8, 2003**

By the Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making* in the captioned proceeding.[1] Nation Wide Radio Stations filed Comments and Reply Comments. First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") filed a Counterproposal and Reply Comments. Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd. filed Joint Reply Comments. Elgin FM Limited Partnership and Charles Crawford ("Elgin-Crawford") jointly filed Reply Comments and Maurice Salsa filed Reply Comments.[2] For the reasons discussed below, we are dismissing both the initial proposal for Channel 233C3 at Quanah, Texas, and the Counterproposal.

Background

2. At the request of Nation Wide Radio Stations, the *Notice* in this proceeding proposed the allotment of Channel 233C3 to Quanah, Texas.[3] In response to the *Notice*, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. In one aspect of this Counterproposal, the Joint Parties propose the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallotment of Channel 248C to Keller, Texas, and modification of the Station KLAK license to specify operation on Channel 248C at Keller, Texas. In order to accommodate this allotment, the Joint Parties propose three channel substitutions. Included among those substitutions was the

[1] 15 FCC Rcd 15809 (MM Bur. 2000).

[2] In this proceeding, Texas Grace Communications, Elgin FM Limited Partnership, Charles Crawford, Maurice Salsa, M&M Broadcasters, AM&FM Broadcasters and the Joint Parties have filed additional pleadings. In view of our action dismissing the Joint Parties Counterproposal, it will not be necessary to discuss these pleadings in the context of this *Report and Order* terminating this proceeding.

[3] Nation Wide Radio Stations has withdrawn its expression of interest in this allotment. In accordance with Section 1.420(j) of the Rules, Nationwide Radio Stations states that neither it nor any of its principals have been paid or promised any consideration for the withdrawal of its expression of interest in the Quanah allotment.

substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification of the Station KRZB permit to specify operation on Channel 230C1. On the basis of our own engineering review, Joint Reply Comments filed by Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd., and Reply Comments filed by Maurice Salsa, the proposed transmitter site (33-36-58 and 98-51-42) for the Channel 230C1 allotment at Archer City is short-spaced to a prior-filed application filed by AM & FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ) (the "KICM Class C1 Application").

3. Counterproposals that are in conflict with a previously filed application can be considered if the counterproposal is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice.[4] The Note also requires a counterproponent to show that it could not have known by exercising due diligence of the pending conflicting FM application. The Joint Parties and AM & FM Broadcasters submitted Reply Comments addressing this issue. Under the agreement, AM & FM Broadcasters agrees to file an application to downgrade Station KICM to Channel 229C2 in the event its application is granted and the Counterproposal is adopted. Pursuant to the agreement, the Joint Parties would "compensate" AM & FM Broadcasters for the downgrade of Station KICM. On August 20, 2001, the staff granted the KICM Class C1 Application.

Discussion

4. We dismiss the Counterproposal because the proposed Archer City Channel 230C1 allotment is short-spaced to the KICM Class C1 construction permit. The Joint Parties have not shown that they could not have known about the then-conflicting KICM Application. Nor have the Joint Parties sought to amend their Counterproposal to protect the proposed Archer City Channel 230C1 allotment.

5. The Commission does not entertain a short-spaced allotment that is contingent on the grant of another application.[5] This is precisely what the Joint Parties seek. The Archer City allotment is short-spaced to the KICM construction permit and contingent on the staff granting future applications by AM & FM Broadcasters for both a Class C2 construction permit and license. We reject Joint Parties argument that its downgrade proposal complies with the contingent application procedures set forth in Section 73.3517(e) of the Commission's Rules. Section 73.3517(e) permits the simultaneous acceptance of contingent *minor change applications*. It does not authorize the filing of contingent rulemaking petitions. Accordingly, the Counterproposal must be dismissed.

Alternative Proposals

6. The Joint Parties filed an alternative twelve-allotment proposal in anticipation of a staff determination that the Channel 230C1 Archer City allotment is impermissibly short-spaced to the KICM permit. We reject this alternative. A counterproposal must conflict with the proposal set forth in the *Notice*.[6] In this instance, none of these proposals conflict with Nation Wide Radio Station's initial proposal for a Channel 233C3 allotment at Quanah. As such, we will not bifurcate the Counterproposal or otherwise consider any of these proposals in the context of this proceeding.[7]

---

[4] *See* Note to Section 73.208 of the Rules; *see also Conflicts Between Applications and Petitions for Rule Makingto Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993).

[5] *See Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (MM Bur. 1988), *recon.* 3 FCC Rcd 6626 (MM Bur. 1988); *see also Cut and Shoot, Texas*, 11 FCC Rcd 16383 (MM Bur. 1996).

[6] *See Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n. 5 (1990).

[7] *See also Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bur. 1988).

7. In the event that its Counterproposal can not be favorably entertained, the Joint Parties advance two alternative proposals. The staff no longer entertains alternative proposals set forth in counterproposals.[8] In any event, each of these alternatives fails to comply with our rules and procedures. The first proposal involves the proposal to reallot Channel 248C to Keller, Texas, and modify the Station KLAK license to specify operation on Channel 248C at Keller. A Channel 248C allotment at Keller requires the substitution of Channel 230C1 at Archer City, and thus, cannot be considered. The second alternative only proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallotment of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway. The Joint Parties also proposed related channel substitutions necessary to accommodate this reallotment. However, none of these proposed channel substitutions conflict with the underlying Channel 233C3 allotment at Quanah, Texas, proposed in the *Notice*.

8. Accordingly, IT IS ORDERED, That the aforementioned proposal filed by Nation Wide Radio Stations for a Channel 233C3 allotment at Quanah, Texas, IS DISMISSED.

9. IT IS FURTHER OREDERED, That the aforementioned Counterproposal filed by the Joint Parties IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

[8] *See Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (MM Bur. 2001).

Attachment D

(Report & Order, MB Docket No. 05-112, released June 15, 2007, denied the requested Channel 249C1 at Converse, Texas)

MAILED
JUN 18 2007
FCC

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

In the Matter of

Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 05-112
FM Broadcast Stations.	)	RM-11185
(Fredericksburg, Converse, Flatonia,	)	RM-11374
Georgetown, Ingram, Lake way, Lagos Vista,	)	
Llano, McQueen, Nolensville, 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)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 13, 2007 **Released: June 15, 2007**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in MB Docket No. 05-112[1] and the *Notice of Proposed Rule Making* in MB Docket No. 05-151.[2] The *Llano NPRM* proposed the allotment of Channel 297A to Llano, Texas. In response to *Llano NPRM*, Mantilla Broadcasting Properties, Ltd. ("Mantilla") filed a Counterproposal proposing the allotment of Channel 297A to Goldthwaite, Texas.[3] The *Fredericksburg NPRM* proposed the allotment of Channel 256C3 to Fredericksburg, Texas. In response to *Fredericksburg NPRM*, Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, LP, and Capstan TX Limited Partnership ("Joint Parties") filed a Counterproposal involving eleven communities in Texas.[4] Included among these proposals was the substitution of Channel 297A for Channel 242A at Llano, Texas. This conflicts with

[1] *Fredericksburg, Texas*, Notice of Proposed Rule Making, 20 FCC Rcd 6009 (MB 2005) ("*Fredericksburg NPRM*").

[2] *Llano and Junction, Texas*, Notice of Proposed Rule Making, 20 FCC Rcd 6318 (MB 2005) ("*Llano NPRM*").

[3] In MB Docket No. 05-151, Linda Crawford filed Comments and a Withdrawal of Petition. The Joint Parties filed Comments, a Supplement, a Motion to Accept Supplement, and Reply Comments. In addition to its Counterproposal, Munbilla filed Reply Comments, Further Reply Comments and an Opposition to Motion to Accept Supplement.

[4] In MB Docket No. 05-112, Katherine Pyeatt filed Comments, an Opposition to Counterproposal, and Withdrawal of Petition. In addition to their Counterproposal, the Joint Parties filed Reply Comments, a Supplement, a Motion to Accept Supplement, and a Motion to Strike Opposition to Counterproposal. Munbilla filed Reply Comments and an Opposition to Motion to Accept Supplement.

each of the Channel 297A proposals in MB Docket No. 05-151. For this reason, we are consolidating these dockets.[5] As discussed below, we are allotting Channel 297A to Goldthwaite, Texas.

I. BACKGROUND

2. At the request of Katherine Pyeatt, the *Fredericksburg NPRM* proposed the allotment of Channel 256C3 to Fredericksburg, Texas. The Joint Parties Counterproposal proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallotment of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway, Texas. In order to accommodate Channel 247C1 at Lakeway, the Joint Parties propose the substitution of Channel 245C1 for Channel 247C at San Antonio, Texas, and modification of the Station KAJA license to specify operation on Channel 245C1 at a new site.[6] To accommodate both Channel 245C1 at San Antonio and Channel 247C1 at Lakeway, the Joint Parties propose the substitution of Channel 243C2 for Channel 244C1 at Georgetown, Texas, reallotment of Channel 243C2 to Lago Vista, Texas, and modification of the Station KHFI license to specify operation on Channel 243C2 at Lago Vista, Texas. In order to reallot Channel 243C2 to Lago Vista, the Joint Parties propose the substitution of Channel 256A for Channel 243A at Ingram, Texas. To this end, it would also be necessary to modify the outstanding Station KAKI construction permit to specify operation on Channel 256A.[7] The Channel 247C1 allotment at Lakeway also requires the substitution of Channel 297A for Channel 242A at Llano, Texas, and modification of the Station KQBT license to specify operation on Channel 297A.[8] In turn, the channel substitution at Llano requires the Joint Parties to propose the substitution of Channel 249A for Channel 297A at Nolanville, Texas, and modification of the Station KLFX license to specify operation on Channel 249A.[9] To accommodate Channel 249A at Nolanville, the Joint Parties propose the relocation of the transmitter site for Station KVCQ, Channel 249C1, McQueeney, Texas, and change of its community of license to Converse, Texas. Rawhide Radio, L.L.C., licensee of Station KVCQ has consented to the transmitter relocation and change of community of license. Finally, the Joint Parties recognize that the proposed reallotment to Converse will create a small gray area within the area that would lose service. To serve this area, the Joint Parties propose the allotment of Channel 232A to Flatonia, Texas.

3. At the request of Linda Crawford, the *Llano NPRM* proposed the allotment of Channel 297A to Llano, Texas, as its fourth commercial FM service. To accommodate the allotment at Llano, Crawford requested a change in the reference coordinates for vacant Channel 297A at Junction, Texas. In response to the *Notice*, Munbilla filed a Counterproposal proposing the allotment of Channel 297A to Goldthwaite,

[5] The proposed allotment of Channel 297A at Llano conflicts with the proposed substitution of Channel 297A for Channel 242A at Llano contained in the Joint Parties Counterproposal in MM Docket No. 00-48. Similarly, the proposed allotment of Channel 256C3 at Fredericksburg conflicts with a proposal to allot Channel 256A to Ingram, Texas, also contained in the Joint Parties Counterproposal in MM Docket No. 00-48. The staff has dismissed this MM Docket No. 00-48 Counterproposal. *Quanah, Texas, et al.*, Report and Order, 18 FCC Rcd 9495 (MB 2003), *aff'd* Memorandum Opinion and Order, 19 FCC Rcd 7159 (MB 2004), *app. for review pending*. An Application for Review was filed on June 21, 2004. Both the *Fredericksburg NPRM* and the *Llano NPRM* cautioned parties that the grant of any proposal would be subject to the outcome of MM Docket No. 00-48, because that proceeding is effective but not final. *See Auburn, Alabama, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003).

[6] CCB Texas Licenses, L.P. is the licensee of Station KAJA and Station KHFI, and one of the Joint Parties.

[7] This construction permit was (File No. BNPH-20050103ACN) also conditioned on the outcome of MM Docket No. 00-148. Radioactive, LLC, permittee of Station KAKI has filed a one-step application to specify operation on Channel 243C3 (File No. BMPH-20050815AEK).

[8] Rawhide Radio, LLC, is the licensee of Station KQBT and is one of the Joint Parties.

[9] Clear Channel Broadcasting Licenses, Inc., is the licensee of Station KLFX and is one of the Joint Parties.

Texas, as a first local service.

4. Both *Notices* referred to the separate proceeding in MM Docket No. 00-148 involving a Joint Parties Counterproposal to a proposal to allot Channel 233C2 to Quanah, Texas. In order to provide a background to this consolidated proceeding, it is necessary to set forth certain aspects of MM Docket No. 00-148 and the Joint Parties Counterproposal filed in that proceeding.

5. In response to the *Notice* in MM Docket No. 00-148, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. While the Joint Parties Counterproposal in MB Docket No. 05-112 proposes some of the allotments set forth in the Counterproposal filed in MM Docket 00-148, this latter Counterproposal includes certain additional allotments.[10] In MM Docket No. 00-148, the Joint Parties proposed the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallotment of Channel 248C to Keller, Texas, and the modification of the Station KLAK license to specify operation on Channel 248C at Keller. In order to accommodate this allotment, the Joint Parties proposed three channel substitutions. Included among those substitutions was the substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification Station KRZB construction permit to specify operation on Channel 230C1. The proposed Channel 230C1 allotment at Archer City was short-spaced to an application filed by AM&FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ). For this reason, the *Report and Order* in MM Docket No. 00-148 dismissed the entire Counterproposal. Subsequently, we denied a Petition for Partial Reconsideration. In doing so, we rejected the Joint Parties argument that we should have considered the portion of the Counterproposal which was not defective and issued a separate Notice of Proposed Rule Making *nunc pro tunc* to the time its Counterproposal was originally filed.

II. DISCUSSION

6. We deny the Joint Parties Counterproposal in MB Docket No. 05-112. As stated in the Joint Parties Counterproposal, its Supplement and Munbilla's Further Reply Comments, the proposed Channel 297A for Channel 242A substitution at Llano is necessary to accommodate Channel 247C1 at Lakeway. The Joint Parties Counterproposal in this proceeding was filed on the May 9, 2005, comment date in MB Docket No. 05-112. This Channel 297A substitution at Llano is short-spaced to the Station KHLB construction permit at Burnet, Texas (File No. BPH-20030902ADU). That application was filed on September 2, 2003, and granted on June 29, 2004. Both of these dates were prior to the Joint Parties Counterproposal in this proceeding. The construction permit contained the following condition:

> The grant of this permit is conditioned on the final outcome of MM Docket No. 00-148. The final outcome of that proceeding may require KHLB to change frequency, class, or site location. Accordingly, any construction undertaken pursuant to this permit is at the permittee's sole risk. *See Meridian Communications,* 2 FCC Rcd 5904 (Rev. Bd. 1987).

Except for proposals being considered in MM Docket No. 00-148, the Station KHLB application is entitled to cut-off protection from the date it was filed from all subsequently filed rulemaking proposals and applications.[11] Contrary to the assertions by the Joint Parties, the Counterproposals filed in MB

[10] The Joint Parties Counterproposal in MM Docket No. 00-148 involved the additional communities of Archer City, Keller, Knox City, Seymour and Wellington, Texas, and Ardmore, Durant, Elk City, Healdton, Lawton and Purcell, Oklahoma.

[11] *See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments ("Conflicts"),* Report and Order, 7 FCC Rcd 4917 (1992), *recon. denied in rel. part,* Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993); *see also* 47 C.F.R. § 73.208(a)(1).

Docket No. 05-112 and MM Docket No. 00-148 are not the "same."[12] In MB Docket No. 05-112, the Joint Parties deleted the portion of their earlier Counterproposal which we found to be defective. This recasting of the dismissed Counterproposal in MM Docket No. 00-48 does not revive that dismissed proposal or create cut-off rights in MB Docket No. 05-112 that in some way relate back to the dismissed MM Docket No. 00-48 Counterproposal. Thus, the Joint Parties' failure to fully protect the Station KHLB construction permit, at the time the MB Docket No. 05-112 Counterproposal was filed, is fatal to that Joint Parties' Counterproposal.[13] The condition on the Station KHLB construction permit relates only to the possibility that the Commission could grant review and reverse the outcome in MM Docket No. 00-148.

7. Both Linda Crawford and Katherine Pyeatt filed a Withdrawal of Petition requesting dismissal of their respective proposals. In accordance with Section 1.420(j) of the rules, both parties filed affidavits stating that no consideration has been paid or promised, directly or indirectly, for these requests for dismissals. As requested, we are dismissing both proposals.

8. We are allotting Channel 297A to Goldthwaite, Texas.[14] This will provide Goldthwaite with its first local service. This allotment conflicts with the proposed substitution of Channel 297A for Channel 242A at Llano, Texas, contained in the Joint Parties Counterproposal in MM Docket No. 00-148. For this reason, the Channel 297A allotment in this proceeding is conditioned on the outcome of MM Docket No. 00-148 and will not be available for auction until final resolution of that proceeding.

III. ORDERING CLAUSES

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5©(1), 303 (g) and (r) and Section 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b0 and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 30, 2007, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

Community	Channel No.
Goldthwaite, Texas	297A

10. IT IS FURTHER ORDERED, That the allotment of Channel 297A to Goldthwaite, Texas, is conditioned on the outcome of MM Docket No. 00-148 and is subject to summary deletion depending upon the action by the Commission in that proceeding.

11. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Linda Crawford for Channel 297A at Llano, Texas, IS HEREBY DISMISSED.

12. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Katherine Pyeatt for Channel 256C3 at Fredericksburg, Texas, IS HEREBY DISMISSED.

13. IT IS FURTHER ORDERED, that the aforementioned Counterproposal jointly filed by Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, LP, and Capstan TX Limited Partnership, IS DENIED.

[12] Joint Parties Counterproposal in Summary and Joint Parties Supplement at 2.

[13] *See Broken Arrow and Bixby, Oklahoma,* 3 FCC Rcd 6507 (MMB 1988); *Amboy, California,* 19 12405 (MB 2004); *Milford, Utah,* 19 FCC Rcd 10335 (MB 2004).

[14] The reference coordinates for the Channel 297A allotment at Goldthwaite, Texas, are 31-30-00 and 98-42-23.

14. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. § 801(a)(1)(A).

15. A filing window for Channel 297A at Goldthwaite, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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