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

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

REPORT AND ORDER

Adopted: October 8, 2008 **Released: October 10, 2008**

By the Assistant Chief, Audio Division, Media Bureau:

1. In response to a Petition for Rule Making filed by Charles Crawford ("Petitioner") the Audio Division considers herein a *Notice of Proposed Rule Making*[1] proposing the allotment of Channel 299A to Iola, Texas, as that community's second local aural transmission service (RM-11411). Roy E. Henderson has filed timely "Comments and Counterproposal" requesting that the Commission allot Channel 299A to Buffalo, Texas, as a second local aural transmission service at Buffalo (RM-11422). Katherine Pyeatt has filed a timely "Counterproposal" requesting that Channel 267A be allotted to Normangee, Texas, as a first local aural transmission service to that community. To accommodate that allotment, Pyeatt requests that Channel 299C3 be substituted for Channel 267A as the reserved assignment for Station KKLB(FM) ("KKLB"), Madisonville, Texas, in the Media Bureau's Consolidated Data Base System (RM-11423).[2] Pyeatt holds a construction permit for Station KKLB, Channel 267A, Madisonville, Texas. The two counterproposals were announced by *Public Notice*.[3] In response to the *Public Notice*, Henderson filed Reply Comments and Pyeatt filed "Reply Comments to Counterproposals." Petitioner did not file any comments reiterating his interest in implementing his proposal and therefore his proposal is denied. For the reasons stated below, we grant Pyeatt's counterproposal and deny Henderson's counterproposal.

2. The Commission evaluates conflicting allotment proposals pursuant to the FM allotment priorities.[4] In this case, Henderson's Counterproposal involves adding a second local aural transmission service to Buffalo (priority 4), while Pyeatt's Counterproposal proposal would provide a first local aural

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[1] *Iola, Texas*, Notice of Proposed Rule Making, 22 FCC Rcd 21662 (MB 2007).

[2] Ms. Pyeatt has also filed an application for Channel 267A at Normangee and another application to upgrade Channel 267A to Channel 299C3 at Station KKLB.

[3] Report No. 2859, dated April 2, 2008.

[4] *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local aural transmission service and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).)

transmission service to Normangee (priority 3).[5] Accordingly, we conclude that the public interest would be better served by Pyeatt's Counterproposal.[6] Normangee is an incorporated community with a 2000 U.S. Census population of 719 persons. In addition, Normangee has its own fire department, school district, post office, several local churches, and numerous businesses. Thus, Normangee is a community to which an FM allotment can be made. Therefore, we allot Channel 267A to Normangee, Texas. Channel 267A can be allotted to Normangee, Texas, consistent with the Commission's technical requirements at coordinates of 31-04-06 NL and 96-01-24 WL, with a site restriction of 9.7 kilometers (6 miles) northeast of Normangee. Further, we substitute Channel 299C3 for Channel 267A at Station KKLB, Madisonville, in order to accommodate the allotment of Channel 267A to Normangee. Consistent with the Commission's technical requirements, Channel 299C3 can be substituted for Channel 267A at Madisonville, Texas, at coordinates of 30-53-45 NL and 96-04-31, with a site restriction of 16.8 kilometers (10.4 miles) west of Madisonville.

3. 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* 5 U.S.C. Section 801(a)(1)(A).

4. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective November 24, 2008, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

Community	Channel Number
Normangee, Texas	267A

5. A filing window for Channel 267A at Normangee, 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.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), and 0.283, that effective November 24, 2008, the Media Bureau's Consolidated Data Base System will reflect FM Channel 299C3 as the reserved assignment in lieu of Channel 267A at Madisonville, Texas, for Station KKLB(FM).

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[5] Henderson's Reply Comments suggest that Pyeatt's Counterproposal was primarily motivated by Pyeatt's desire to upgrade her existing construction permit at Madisonville rather than to provide first local service to Normangee. In this regard, we note that the Commission considers a rulemaking proposal such as the one before us to determine whether it complies with the Commission's technical engineering rules, and in comparative situations, to weigh various public interest factors, such as the provision of first local aural transmission service to a community. We do not attempt to scrutinize a proposal to determine what motivated the proponent to recommend each part of that proposal, so long as the proposal serves the public interest.

[6] If Petitioner had expressed a continuing interest in allotting Channel 299A to Iola as a second local service, Pyeatt's Counterproposal would have prevailed because it will provide a first local service to Normangee.

7. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, Katherine Pyeatt's construction permit for Channel 267A at Madisonville, Texas, IS MODIFIED to specify operation on Channel 299C3 at Madisonville, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this *Report and Order*, the permittee specified above shall submit to the Commission a minor change application for construction permit (Form 301);

(b) Upon grant of such construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That the Counterproposal (RM-11423) filed by Katherine Pyeatt IS GRANTED.

9. IT IS FURTHER ORDERED, That the Petition for Rule Making (RM-11421) filed by Charles Crawford IS DENIED.

10. IT IS FURTHER ORDERED, That the Counterproposal (RM-11422) filed by Roy E. Henderson IS DENIED.

11. IT IS FURTHER ORDERED, That MB Docket No. 07-279 IS TERMINATED.

12. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau