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

MAILED

AUG 31 2009

FCC MAIL ROOM

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 08-227
Table of Allotments,	)	RM-11493
FM Broadcast Stations.	)	
(Batesville, Texas)	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: August 19, 2009

Released: August 21, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice"),<sup>1</sup> issued at the request of Katherine Pyeatt ("Petitioner"), proposing the allotment of Channel 250A at Batesville, Texas, as its first local FM transmission service. Petitioner filed comments. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we are amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules,<sup>2</sup> by allotting Channel 250A at Batesville.

2. **Background.** The *Notice* proposed the allotment of Channel 250A at Batesville, as its first local service. As stated in the *Notice*, Batesville is a census designated place (CDP) in Zavala County with a 2000 U.S. Census population of 1,298 persons. Batesville has its own zip code (78829), post office, volunteer fire department, elementary school, and a local church. Additionally, Batesville is listed in the 2004-2005 Texas Almanac as having twenty businesses, receiving a credit rating by Dun & Bradstreet.

3. **Discussion.** Accordingly, we are allotting Channel 250A at Batesville, as its first local service. Channel 250A can be allotted to Batesville consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction of 11.4 kilometers (7.1 miles) east of the community at reference coordinates 28-58-27 NL and 99-30-12 WL. As stated in the *Notice*, this allotment is contingent on the outcome of MM Docket Nos. 00-148<sup>3</sup> and 01-130<sup>4</sup> and MB Docket No. 05-112<sup>5</sup> consistent with our *Auburn* policy.<sup>6</sup>

<sup>1</sup> See *Batesville, Texas*, Notice of Proposed Rule Making, 23 FCC Rcd 17064 (MB 2008).

<sup>2</sup> 47 C.F.R. § 73.202(b).

<sup>3</sup> See *Quanah, Texas et al.*, Memorandum Opinion and Order, 19 FCC Rcd 7159 (MB 2004), *app. for review pending* (dismissing a counterproposal requesting the proposed allotment of Channel 249C1 at Converse, Texas).

<sup>4</sup> See *Batesville, Texas*, Memorandum Opinion and Order, 23 FCC Rcd 640 (2008) (affirming the dismissal of a proposal requesting the allotment of Channel 250A at Batesville, Texas) *appeal pending, sub nom Charles Crawford v. FCC & USA*, No. 08-1059 (D.C. Circuit).

<sup>5</sup> See *Fredericksburg, Texas et al.*, Memorandum Opinion and Order, 22 FCC Rcd 10883 (MB 2007), *app. for review pending* (dismissing a counterproposal requesting the proposed allotment of Channel 249C1 at Converse, Texas)

4. Channel 250A at Batesville is located 320 kilometers from the Mexican Border. Although concurrence has been requested for Channel 250A at Batesville, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes."

5. 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. § 801(a)(1)(A).

6. **Ordering clauses.** Accordingly, pursuant to the authority found 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 October 5, 2009, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Batesville, Texas	250A

7. The window period for filing applications for Channel 250A at Batesville, 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.

8. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

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<sup>6</sup> See *Auburn, Alabama, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003) (stating that parties may rely on actions taken in earlier rule making proceedings that are effective but not yet final) ("*Auburn*")