

ORIGINAL

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

FILED/ACCEPTED

OCT 29 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket 09-190
Table of Allotments)	RM-11566
FM Broadcast Stations)	
(Stonewall, Mason and Santa Anna, Texas))	

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

**MOTION TO RESCIND
NOTICE OF PROPOSED RULE MAKING**

BMP Austin License Company, LP and Border Media Business Trust ("BMP"), licensee and proposed assignee of Station KXXS(FM), Elgin, Texas, by their respective counsel, hereby request immediate rescission of the *Notice Of Proposed Rule Making* ("*NPRM*") (DA 09-2263), released October 23, 2009, in the above captioned proceeding. The *NPRM* proposed the allotment of Channel 280A to Stonewall, Texas, in response to a Petition for Rule Making filed on August 25, 2009 by Katherine Pyeatt. That Petition failed to protect a prior filed (August 11, 2009) and cut off application (BPH-20090811ACJ) by BMP for Station KXXS which included a proposal to substitute Channel 280A for Channel 223A at Burnet, Texas for Station KBEY pursuant to the Commission's *Order to Show Cause* procedures. Based on the attached Channel Study, the Channel 280A Stonewall Petition conflicts with the prior filed BMP application. Thus, the Stonewall Petition should have been dismissed by the Commission as late filed.

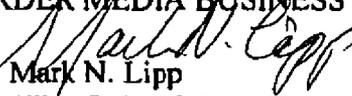
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In *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table Of Allotments*,¹ the Commission amended Section 73.208 of its Rules and added subsections (a)(3) and (b)(2), to protect application proposals against subsequently filed and conflicting rule making proposals. That requirement has been in effect since 1992 and has been consistently followed by Commission staff.² In view of these cited cases, the Commission should not have issued the *NPRM*. Therefore, in order to avoid any delay in having the BMP application processed, . BMP requests the immediate dismissal of the Stonewall Petition.

Respectfully submitted,
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October 29, 2009

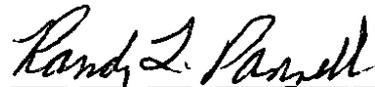
¹ 7 FCC Rcd 4917 (1992), *recons. granted in part*, 8 FCC Rcd 4743 (1993).

² See, e.g., *Bridgeport, Bonham, Palestine, Price, Range and Stephenville, Texas and Ardmore, Lawton, Tecumseh and Fort Towson, Oklahoma*, 16 FCC Rcd 3637 (2000) at para. 7; *Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina*, 11 FCC Rcd 21223(1996), *recons denied* 15 FCC Rcd 10739 (2000) at para. 8; *Washington, Watkinsville, Gray, Forsyth, Irwinton and Atlanta, Georgia*, 18 FCC Rcd 18337 (2003) at para. 4; *Amherst and Lynchburg, Virginia*, 19 FCC Rcd 34 (2004) at para. 2; *Aguila, Apache Junction, Buckeye, Glendale, Peoria, Wenden, and Wickenburg, Arizona* 21 FCC Rcd 3329(2006) at para. 3.

CERTIFICATE OF SERVICE

I, Randy Pannell, hereby certify that on this 29th day of October, 2009, that I mailed a copy of the **Motion to Rescind Notice of Proposed Rule Making** by first class, postage prepaid service to:

Katherine Pyeatt
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Randy Pannell