

ORIGINAL

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

FILED/ACCEPTED

DEC 31 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

**COMMENTS**

BMP Austin License Company, LP and Border Media Business Trust (“BMP”), licensee and transferee of Station KXXS(FM), Elgin, Texas, by their respective counsel, hereby submit Comments to the *Notice Of Proposed Rule Making* (“NPRM”) (DA 09-2263), released October 23, 2009, in the above captioned proceeding.<sup>1</sup> 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 the 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. As a result, on October 29, 2009, BMP submitted the “Motion to Rescind Notice of Proposed Rule Making” which is currently pending. Since the Commission did not act on the Motion to Rescind prior to

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<sup>1</sup> The *NPRM* originally set the Comment date at December 14, 2009. However the Federal Register publication of the *NPRM*, 74 FR 62733, was issued on December 1, 2009, extended the comment date until December 31, 2009. Thus the Comments are timely filed.

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the Comment deadline, BMP is submitting this pleading to reassert its opposition to the proposal to allot Channel 280A to Stonewall, Texas as late filed.

In *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table Of Allotments*,<sup>2</sup> 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.<sup>3</sup> Accordingly, in view of the clear precedent for protecting prior filed applications against conflicting rule making proposals, the Commission should immediately dismiss the Petition for Rule Making proposing to allot Channel 280A to Stonewall, Texas, in this proceeding.

Respectfully submitted,  
BORDER MEDIA BUSINESS TRUST



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Its Counsel

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<sup>2</sup> 7 FCC Rcd 4917 (1992), *recons. granted in part*, 8 FCC Rcd 4743 (1993).

<sup>3</sup> 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.

BMP AUSTIN LICENSE COMPANY, LP

A large, stylized handwritten signature in black ink, appearing to read 'F. Montero'.

By: Francisco R. Montero  
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Its Counsel

December 31, 2009

Graham Brock, Inc. - Broadcast Technical Consultants  
 St. Simons Island, GA - Washington, DC  
 Clearance study for Channel 280A Stonewall, Texas  
 Using proposed allocation site as reference

REFERENCE CLASS = A Int = AA DISPLAY DATES  
 30 08 45.0 N. DATA 10-28-09  
 98 45 45.0 W. Current Spacings to 3rd Adj. SEARCH 10-28-09  
 ----- Channel 280 - 103.9 MHz -----

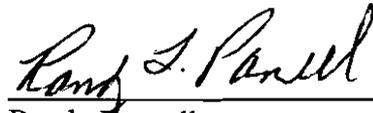
Call	Channel	Location	Azi	Dist	FCC	Margin
	ADD	280A Stonewall	TX 0.0	0.0	115.0	115.0
1333123	APP	280A Stonewall	TX 0.0	0.0	115.0	-115.0
1329130	APP	280A Stonewall	TX 0.0	0.0	115.0	-115.0
1332010	RSV	280A Stonewall	TX 0.0	0.0	115.0	-115.0
1333260	RSV	280A Stonewall	TX 0.0	0.0	115.0	-115.0
AL7725		280A Burnet	TX 32.6	78.6	115.0	-36.4
K13318	DEL	281C2 Mason	TX 326.3	80.5	106.0	-25.5
AL6120	VAC	281C2 Mason	TX 326.3	80.5	106.0	-25.5
AL7728		281C2 Mason	TX 320.0	97.9	106.0	-8.1
KBPA	LIC	278C0 San Marcos	TX 97.3	85.7	86.0	-0.25
ADD	ADD	281C2 Mason	TX 323.3	106.3	106.0	0.26
KHLE	RSV	280A Kempner	TX 36.8	117.5	115.0	2.5
AL9005	AL	280C Ciudad Acuna	CI 247.0	228.6	226.0	2.6
KZEP-FM	LIC	283C1 San Antonio	TX 161.5	85.0	75.0	10.0
KHLE	APP-Z	280A Kempner	TX 36.8	132.6	115.0	17.6
KRIO-FM	LIC	281C1 Pearsall	TX 180.0	157.9	133.0	24.9
AL5227	VAC	280A Smiley	TX 130.1	155.7	115.0	40.7
AU7057574	VAC	277C3 Junction	TX 285.0	103.2	42.0	61.2
1179950	APP	277C3 Junction	TX 285.0	103.2	42.0	61.2
KDHT	LIC	227C Cedar Park	TX 48.8	98.2	29.0	69.2
1294550	APP	277C3 Junction	TX 280.9	112.5	42.0	70.5

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 Reference station has protected zone issue: Mexico  
 } = Station fails minimum 73.215 spacings

CERTIFICATE OF SERVICE

I, Randy Pannell, hereby certify that on this 31st day of December 31, 2009, that I mailed a copy of the **Comments** by first class, postage prepaid service to:

Katherine Pyeatt  
2215 Cedar Springs Road  
Suite 1605  
Dallas, Texas 75201

  
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Randy Jannell