

FEB 23 2011

ECC Mail Room

**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. 05-162
FM Broadcast Stations	)	RM-11227
(Enfield, New Hampshire; Hartford and White River	)	RM-11284
Junction, Vermont; and Keeseville and Morrisonville,	)	
New York)	)	

To: Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission

Attn: The Commission

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

Roy E. Henderson, (“Henderson”), by his attorney, and pursuant to Section 1.429 of the Commission’s Rules, herewith files this petition for reconsideration and clarification of the Memorandum Opinion and Order, FCC 11-8 as released in this proceeding on January 26, 2011. In support whereof, the following is presented:

Henderson is a Commission licensee, holding AM and FM radio and television licenses in Michigan and Texas, and has not heretofore been a party to this proceeding. However, upon review of the Memorandum Opinion and Order, specifically paragraph 10 thereof, it is clear that the new restrictions applicable to new Petitions for Rulemaking requesting modification of the FM Table of Allotments, as first announced in Paragraph 10, and of general application to any prospective Petitioner, such as Henderson, introduce an uncertainty as to the scope and meaning of the new restriction which in itself is

harmful to Henderson, adversely affecting him, and the clarification of which is the sole intention of this Petition. Since the new restrictions were first set forth in paragraph 10 of the Memorandum, Opinion and Order in this case, and not in a Notice and Comment proceeding, there was no prior notice of the Commission's intention to consider or modify the rules and procedures applicable to Petitions for Rulemaking to modify the FM Table of Allotments, and no prior opportunity for Henderson to offer comments upon such proposed changes, as they are now set forth below.

More specifically, prior to the new restriction announced in paragraph 10, it was allowable to request a change of site for a vacant FM allocation, so long as the requested new site met applicable existing spacing requirements. In compliance with that policy, Henderson was contemplating the filing of a Petition for Rulemaking that would necessarily include a minor change in site for an existing vacant FM allotment as part of an overall proposal which would be shown to be in the public interest in service to the objectives of Section 307(b) of the Communications Act. If the new restriction of paragraph 10 is plenary in nature and would therefore proscribe any proposed change in site for the vacant allotment, notwithstanding that the change in site resulted in no discernable negative change to the existing 307(b) basis and character of that existing site, then the whole proposed rulemaking would be barred from filing and consideration.

But reference to what the Commission said in paragraph 10 seems to indicate that the prohibited "modification" referred to therein was one where a change in channel class might have been contemplated, and the Commission in fact makes it clear that it will still permit the filing of a "modification" where the modification is for a same class channel substitution, noting that such a same-class channel modification would "...not disturb

final Section 307(b) determinations on which the allotments were based”, making it clear that this was the test it was using to determine if a proposed “modification” to an existing vacant FM allotment was still acceptable, and that is a most important point.

We also note that while the Commission used a general reference to proposed “modifications and deletions” in paragraph 10, the only specific “modification” to which it directly referred was that of a proposed change in the class of the channel, making it clear that only same-class changes would now be acceptable, it being beyond dispute that a change in class of a channel would clearly change its predicted coverage area and population in such a substantial way as to then introduce a wholly different 307(b) analyses and basis for the allocation. It therefore seems clear that the Commission’s concern here was with identifying and prohibiting the filing of proposed “modifications” in vacant channel allotments that would predictably negatively impact upon the existing 307(b) determination upon which the allotment was originally based, and if that is so, then the filing of a proposed site change that would also not have any recognizable negative impact on the existing 307(b) determination should similarly still be allowable.

Although we believe that to be a fully consistent reading of what the Commission intended in paragraph 10, it was not specifically stated as such, thereby leaving potential Petition filers, such as Henderson, in the unfair and untenable position of either assuming all site changes are now totally barred as prohibited “modifications”, OR assuming that a proposed site change with no recognizable negative impact on the existing 307(b) determination of the vacant channel allotment should be acceptable, but with the risk that it might not be and that all that was invested in preparing the Petition would be subject to dismissal without consideration. We cannot believe that the Commission intended this

uncertainty and therefore request that the new restriction on “modifications” to vacant FM allotments as announced in paragraph 10 be clarified now one way for the benefit of the public and potential filers of rulemaking petitions. .

In sum, there was no specific reference at all in paragraph 10 to any proposed change of site for a vacant allocation as being included in what would now be considered as a prohibited modification, and such a change would seem to be more like an allowable same-class channel change in that a recognizable change in predicted 307(b) coverage would not automatically result (as it would with a change in channel class) and in fact would not be anticipated in most cases. Unfortunately, as it now stands, paragraph 10 would arguably prohibit any site change modification per se, even if it did not result in any recognizable change in the existing 307(b) analyses upon which the existing allocation was originally based.

As such, we would submit that such a plenary prohibition upon a proposed change of site for an existing vacant allocation would then act to block the filing of rulemaking proposals which could otherwise be shown to benefit the public interest in improved efficiency and service to new areas and populations and that there is therefore no basis for such a total prohibition on such a change, and that such a total bar would therefore be contrary to the public interest in increased and improved FM radio service.

It is therefore requested that the Commission clarify what it has said in paragraph 10 to make it clear that Petitions for Rulemaking to make changes in the FM Table of Allotments may still include proposals to change the site of an existing vacant FM allotment provided that such change meets all spacing requirements and that the new site does not change the existing 307(b) analyses for the vacant allocation in any recognizable

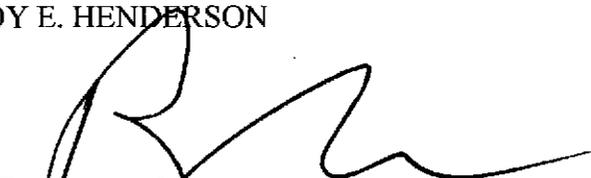
way. For purposes of determining if any such change might be of such substance as to be considered as “recognizable” we would suggest a benchmark of any change in predicted coverage which would diminish either the existing population or the existing area by 3% or less as being de minimis and presumptively acceptable, and anything beyond that being held to be a recognizable change and requiring a waiver of the restriction, for good cause shown.

Henderson otherwise has no objection to the action taken by the Commission in this case or to the final action and conclusion as set forth in Section IV of the Memorandum Opinion and Order. Henderson’s only interest is in the rules of general application as set forth in paragraph 10 of the Memorandum Opinion and Order, and it is respectfully requested that the Commission issue a clarification of the scope and extent of restriction intended in paragraph 10 thereof as requested herein.

Respectfully submitted,

ROY E. HENDERSON

By: \_\_\_\_\_

  
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February 23, 2011

**CERTIFICATE OF SERVICE**

I, Robert J. Buenzle, do hereby certify that copies of the foregoing “Petition for Reconsideration and Clarification” have been served by United States mail, postage prepaid, this 23rd day of February, 2011, upon the following:

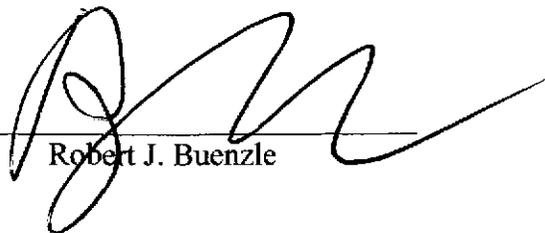
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