

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 07-78
Table of Allotments,	)	RM-11366
FM Broadcast Stations.	)	RM-11383
(Beeville, Christine, George West, and Tilden,	)	
Texas) <sup>1</sup>	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: January 9, 2008**

**Released: January 11, 2008**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“*Notice*”),<sup>2</sup> issued at the request of Katherine Pyeatt (“*Petitioner*”), proposing the allotment of Channel 245C3 at Christine, Texas, as its first local aural transmission service. *Petitioner* filed comments. Linda Crawford (“*Crawford*”) filed a counterproposal. Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc., and Rawhide Radio, L.L.C. (collectively (“*Joint Parties*”) filed several pleadings.<sup>3</sup> No other counterproposals or comments were received in response to this *Notice*. For reasons discussed below, we are allotting Channel 245C3 at Christine, Texas.

2. **Background.** *Petitioner* filed comments reaffirming its interest in the proposed allotment of Channel 245C3 at Christine, Texas, as its first local aural transmission service. The *Joint Parties* filed comments urging the Commission to withhold action in this proceeding until there is final resolution in MM Docket No. 00-148 since the proposed allotment of Channel 245C3 at Christine conflicts with a dismissed counterproposal in that docket, proposing the substitution of Channel 245C1 for Channel 245C at San Antonio, Texas and modification of the Station KAJA license.<sup>4</sup>

3. In response to the *Notice*, *Crawford* filed a timely counterproposal requesting the allotments of Channel 245A at Christine, Texas and Channel 250A at Tilden, Texas, as first local aural transmission services. To accommodate the proposed Tilden allotment, *Crawford* requests the substitution of Channel 296A for vacant Channel 250A at George West, Texas, which in turn requires the substitution of Channel 246A for Channel 296A at Beeville, Texas and modification of the Station KRXB(FM) license.<sup>5</sup>

<sup>1</sup> The communities of Beeville, George West, and Tilden, Texas were added to the caption. *See Public Notice*, Report No. 2819, rel. July 17, 2007.

<sup>2</sup> *See Christine, Texas*, Notice of Proposed Rule Making, 22 FCC Rcd 7604 (MB 2007).

<sup>3</sup> The *Joint Parties* filed Comments, Opposition to Counterproposal and Opposition to Order to Show Cause.

<sup>4</sup> The *Joint Parties*’ counterproposal was dismissed in MM Docket No. 00-148, which contained this proposal.

<sup>5</sup> We issued an *Order to Show Cause* directed at Shaffer Communications Group, Inc., licensee of Station KRXB(FM), Channel 296A, Beeville, Texas. No response was received from the licensee. The *Joint Parties* filed an Opposition to the Order to Show Cause. *See Beeville, Christine, George West, and Tilden, Texas*, Order to Show Cause, 22 FCC Rcd 15108 (MB 2007).

4. Crawford states that her counterproposal is acceptable as filed although it conflicts with several dismissed proposals filed in earlier rulemaking proceedings which are not yet final.<sup>6</sup> Additionally, Crawford states that she is exempt from simultaneously filing a FCC Form 301 and paying the associated filing fees for the proposed allotments of Channel 245A at Christine, Texas and Channel 250A at Tilden, Texas because the Petitioner was exempt from filing a FCC Form 301 and paying the associated filing fees because her proposal was filed prior to the adoption of the *Allocations Streamlining R&O*, effective January 19, 2007.<sup>7</sup> Therefore, Crawford contends that she should also be exempt.

5. In response to the *Public Notice*, the Joint Parties filed an Opposition, requesting dismissal of the counterproposal because it was not technically correct when filed because the proposed Channel 245A at Christine, Texas and Channel 250A at Tilden, Texas are both short-spaced to proposals contained in its dismissed counterproposal in MB Docket No. 05-112.<sup>8</sup> In this regard, the Joint Parties argues that Crawford misinterprets *Auburn* because parties can only rely on actions in earlier rule making proceeding that are not yet final if such action is effective. In this case, the counterproposal was filed before the Report and Order in MB Docket No. 05-112 became effective on July 30, 2007.<sup>9</sup> Moreover, the Joint Parties contends that the counterproposal is also defective because Crawford failed to simultaneously file Form 301 applications for the proposed facilities at Christine and Tilden, and pay the required filing fees, as required by the *Allocations Streamlining R&O*.

6. **Discussion.** Generally, conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>10</sup> In this instance, a comparison is no longer necessary because the Crawford counterproposal is unacceptable as filed<sup>11</sup> In this regard, the proposed allotment of Channel 245A at Christine, Texas and Channel 250A at Tilden, Texas were at the time of filing short-spaced to proposals contained in a then-pending counterproposal in MB Docket No. 05-112.<sup>12</sup> Crawford's counterproposal was filed on June 18, 2007, prior to the July 30, 2007 effective date of the Order dismissing the

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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*").

<sup>7</sup> See *Revision of Procedures Governing Amendment of FM Table of Allotments and Changes of Community of License in the Radio Broadcast Service*, Report and Order, 21 FCC Rcd 14212 (2006) (stating that a party filing a petition for rule making to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application specifying the proposed facilities and paid the associated fees) ("*Allocations Streamlining R&O*").

<sup>8</sup> Citing *Saint Joseph, Louisiana, et al.*, Report and Order, 21 FCC Rcd 2254 (MB 2006) and *Amboy, California, et al.*, Report and Order, 19 FCC Rcd 12405 (MB 2004) (dismissing counterproposals that are considered impermissibly contingent proposals).

<sup>9</sup> See *Fredericksburg, Texas, et al.* Report and Order, 22 FCC Rcd 10883, para 9 (MB 2007),

<sup>10</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

<sup>11</sup> See *Cloverdale, Montgomery and Warrior, Alabama*, Memorandum Opinion and Order, 12 FCC Rcd 2090 (MMB 1997) (stating that counterproposals are required to be "technically correct and substantially complete" at the time they are filed.

<sup>12</sup> The proposed Channel 245A at Christine is short-spaced to the proposed substitution of Channel 245C1 at San Antonio for Station KAJA and proposed Channel 250A at Tilden is short-spaced to the proposed reallocation of Channel 249C1 from McQueeney to Converse, Texas for Station KLTO(FM), dismissed in MM Docket No. 00-148 and MB Docket No. 05-112. See *Fredericksburg, Texas, et al.*, Report and Order, 22 FCC Rcd 10883 (MB 2007), *pet. for reconsideration pending*. See *Public Notice*, Report No. 2838, rel. October 18, 2007.

conflicting MB Docket No. 05-112 counterproposal. Under *Auburn*, counterproposals and initial rulemaking proposals may be contingent upon action in a non-final proceeding provided that on the date that the proposal is filed, there is a decision in the earlier, cut-off proceeding, which is effective but not final.<sup>13</sup> Counterproposals are subject to dismissal if they are not substantially complete and technically correct when filed.<sup>14</sup> Crawford has provided no basis to extend *Auburn* in the context of this proceeding.

7. Additionally, we disagree with Crawford's contention that she was not required to simultaneously file a FCC Form 301 and paid the associated filing fees for the proposed allotment of Channel 245A at Christine and Channel 250A at Tilden. As stated in the *Notice*, the Petitioner was exempt under the new rules because her proposal was filed prior to the adoption of the *Allocations Streamlining R&O*.<sup>15</sup> However, the *Notice*, in this proceeding, was adopted on April 25, 2007, several months after the January 19, 2007, effective date of the *Allocations Streamlining R&O*. Therefore, Crawford's counterproposal was subject to the new rules, which require that a party filing a petition for rule making to add a new allotment to the FM Table, whether as an original proposal or as a counterproposal, simultaneously file a Form 301 application specifying the proposed facilities and submit the associated fee. Accordingly, Crawford's counterproposal is dismissed.

8. Consistent with our *Auburn* policy, we are allotting Channel 245C3 at Christine, Texas, as it first local aural transmission service.<sup>16</sup> As stated in the *Notice*, this allotment is contingent on the outcome of MM Docket No. 00-148 since the Christine allotment is short-spaced to the proposed Channel 245C1 substitution at San Antonio, Texas. Additionally, the Christine allotment is subject to the outcome of MM Docket No. 01-153 because the allotment is short-spaced to the proposed allotment of Channel 245C3 at Tilden, Texas.<sup>17</sup> The respective actions taken in these proceedings that dismissed both counterproposals are considered effective but not yet final since an appeal is pending.

9. 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).

10. **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 February 25, 2008, 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>
Christine, Texas	245C3

<sup>13</sup> *Id.* note 6.

<sup>14</sup> *See, e.g., Fort Bragg, CA*, 6 FCC Rcd 5817 (MMB 1991) (counterproposals must be technically correct and substantially complete when filed); *Broken Arrow and Bixby, OK, and Coffeyville, KS*, 3 FCC Rcd 6507, 6511 n.2 (MMB 1988); and *Sanford and Robbins, NC*, 12 FCC Rcd 1 (MMB 1997).

<sup>15</sup> The proposal to allot Channel 245C3 was also filed before the adoption of the notice of proposed rule making, proposing these new rules for FM Allocations. *See Revision of Procedures Governing Amendment of FM Table of Allotments and Changes of Community of License in the Radio Broadcast Service*, Notice of Proposed Rule Making, 20 FCC Rcd 11169 (2005).

<sup>16</sup> The reference coordinates for Channel 245C3 at Christine are 28-40-00 NL and 98-30-15 WL. This site is located 13.6 kilometers (8.4 miles) south of Christine.

<sup>17</sup> *See Quanah, Texas, et al.*, Memorandum Opinion and Order, 19 FCC Rcd 7159 (MB 2004), *app. for review pending* and *Tilden, Texas*, Report and Order, 19 FCC Rcd 6112 (MB 2004), *app. for review pending*.

11. The window period for filing applications for Channel 245C3 at Christine, 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.

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

13. IS FURTHER ORDERED, That Linda Crawford's counterproposal IS DISMISSED.

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

FEDERAL COMMUNICATIONS COMMISSION

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