

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-159
Table of Allotments,)	RM-10164
FM Broadcast Stations.)	RM-10395
(Comanche, Mullin and Mason, Texas) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 19, 2003

Released: March 21, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“Notice”),² issued in response to a petition filed by Charles Crawford (“Petitioner”), proposing the allotment of Channel 224A to Comanche, Texas, as that community’s second local FM transmission service (RM-10164). Petitioner filed supporting comments. A counterproposal was filed on behalf of Mullin Broadcasters (“MB”), proposing the allotment of Channel 224C3 at Mullin, Texas, as that community’s first local aural transmission service.³ MB also requests the substitution of Channel 259A for vacant Channel 224A at Mason, Texas, to accommodate its proposal. Responsive comments were filed individually by the Petitioner, MB and M&M Broadcasters, Ltd. (“M&M”).

2. MB states that Mullin, Texas, is a community for allotment purposes. In support of its proposal, MB reports that Mullin is an incorporated community, and is attributed with a population of 175 persons in the 2000 U.S. Census. Further, MB provided demographic information regarding Mullin to demonstrate that it has its own zip code (76864), maintains its own schools, fire services, churches, health care facilities and numerous business entities, several of which identify themselves with the community in their trade name, such as the Mullin Café and Mullin Service Center. MB asserts that in accordance with the Commission’s allotment priorities,⁴ Mullin is entitled to a first local service preference (priority three), since Comanche currently has local aural service.⁵

¹ The communities of Mullin and Mason, Texas, have been added to the caption.

² *Comanche, Texas*, 16 FCC Rcd 14075 (MB 2001).

³ MB’s counterproposal was placed on Public Notice March 15, 2002 (Report No. 2539).

⁴ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)). See *Revisions of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁵ Comanche is served locally by Station KYOX-FM and KCON-AM.

3. MB also advises that the requested allotment of Channel 224C3 at Mullin requires the substitution of Channel 259A for vacant Channel 224A at Mason, Texas.⁶ MB reports that Channel 259A can be allotted to Mason, Texas, at the reference coordinates for the Channel 224A allotment, consistent with the technical requirements of the Commission's Rules.⁷

4. In response to MB's counterproposal, Petitioner suggests that Channel 263A could be allotted to Mullin instead of Channel 224C3, to remove the conflict with proposed Channel 224A at Comanche, Texas. Petitioner also remarks that MB's request to substitute Channel 259A for Channel 224A at Mason is unavailable because it conflicts with proposed Channel 258C1 at Eldorado, Texas.

5. MB disputes Petitioner's arguments. Initially, MB states that there is no conflict between the Mason and Eldorado allotments.⁸ MB also argues that Petitioner's suggested substitution of Channel 263A for requested Channel 224C3 at Mullin, Texas, to remove a conflict with his proposal for Channel 224A at Comanche, is not equivalent. MB concludes that since the Comanche and Mullin, Texas, proposals remain in conflict, they must be compared according to the Commission's allotment priorities.

6. M&M's reply comments support the requested allotment of Channel 224C3 at Mullin, and commit to apply for the channel if allotted. M&M endorses Mullin's eligibility as a *bona fide* community that would benefit by the allotment of a first local broadcast service to serve the needs and interests of its residents.

7. A staff review of the proposals under consideration herein, reveals the unavailability of any other Class A channel for use at Comanche, or an alternate Class C3 channel for allotment at Mullin, Texas. Conflicting proposals are generally considered under the guidelines set forth in our allotment priorities, *supra*. Neither the Petitioner nor MB, respectively, demonstrated that the requested allotment of Channel 224A at Comanche, or Channel 224C3 at Mullin, Texas, would provide any first or second fulltime aural reception service, thus eliminating allotment priorities (1) and (2). Therefore, since MB's proposal for Channel 224C3 at Mullin would provide a first local aural service at that community (priority 3), whereas Comanche currently receives local aural service (priority 4), the Mullin proposal prevails.⁹ Additionally, contrary to Petitioner's assertion, we find that Channel 259A is available for

⁶ The distance between Mullin and Mason is 105 kilometers (65 miles) whereas a minimum distance of 142 kilometers (88 miles) is required between Class A and Class C3 co-channel allotments.

⁷ Channel 224A at Mason was listed among other vacant nonreserved band FM allotments, in Broadcast Auction No. 37, previously scheduled to commence on December 5, 2001. However, on July 3, 2001, the United States Court of Appeals for the District of Columbia Circuit in *National Public Radio, Inc., et al v. FCC, Nos. 00-1246 and 00-1255* (decided July 3, 2001) ("*NPR*") vacated the portion of the Commission's *Noncommercial Report and Order*, 65 FR 36375 (June 8, 2000), that required noncommercial educational ("*NCE*") entities that applied for authorizations in the non-reserved spectrum to participate in auctions with mutually exclusive commercial applicants. As the vacant nonreserved FM band allotments included in Auction No. 37 are potentially impacted by the Court's ruling, the Commission postponed Auction No. 37, pending its response to the *NPR* decision. See Public Notice, DA 01-2148, released September 14, 2001, 66 FR 48467 (September 20, 2001).

⁸ The distance separation between proposed Channel 258C1 at Eldorado and requested Channel 259A at Mason, Texas, is 133.3 kilometers (83 miles), and therefore meets the required minimum distance separation between first adjacent Class A and Class C1 channels.

allotment at Mason, Texas, as a replacement for vacant Channel 224A, and is not in conflict with proposed Channel 258C1 at Eldorado, Texas.¹⁰

8. In view of the interests expressed in providing Mullin, Texas, with a first local aural service, we will allot Channel 224C3 to that community, as requested. Channel 224C3 can be allotted to Mullin consistent with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules without a site restriction.¹¹ Additionally, we will allot Channel 259A as a replacement for vacant Channel 224A at Mason, Texas, at the current reference site for the vacant allotment.¹²

9. As Mason, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexico border, we will advise the Mexican government of the change to the FM Table of Allotments at that community.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Commission's Rules, IT IS ORDERED, That effective **May 5, 2003**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Mason, Texas	239C2, 259A, 269C3, 273C2, 281C2, 289C2
Mullin, Texas	224C3

11. A filing window for Channel 259A at Mason, Texas, and for Channel 224C3 at Mullin, Texas, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, That the petition for rule making filed by Charles Crawford (RM-10164), requesting the allotment of Channel 224A to Comanche, Texas, IS DENIED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁹ Additionally, in accordance with Commission policy, we will allot the highest class channel requested to a community that meets the technical provisions of our Rules. In that manner we can assure the most effective and efficient management of the frequency spectrum while providing the public with the greatest coverage area broadcast facility to the requested community. It has been demonstrated that Channel 224C3 is available to Mullin, and therefore, we would not consider a Class A allotment at that community in this proceeding.

¹⁰ See footnote 8, supra.

¹¹ Reference coordinates for Channel 224C3 at Mullin, Texas, are 31-33-24 NL and 98-39-55 WL.

¹² Reference coordinates for Channel 259A at Mason, Texas, are 30-45-00 NL and 99-14-00 WL.

14. For further information concerning the above, contact Nancy Joyner, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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