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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 02-177
Table of Allotments,	)	RM-10489
FM Broadcast Stations.	)	
(Milano, Texas)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 19, 2004 **Released: May 21, 2004**

By the Assistant Chief, Audio Division:

1. At the request of David P. Garland ("Petitioner"), the Audio Division has before it a *Notice of Proposed Rule Making*[1] proposing the allotment Channel 274A at Milano, Texas, as the community's first local aural transmission service. Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Roy E. Henderson ("Henderson"), licensee of Station KLTR(FM), proposing the upgrade of Channel 297A to 297C3, and the reallotment of Channel 297C3 from Caldwell to Bedias, Texas. To accommodate the upgrade and reallotment, Henderson also proposed (a) the allotment of Channel 274A at Caldwell, Texas, as a replacement service; and (b) the modification of the reference coordinates for vacant Channel 274A at Centerville, Texas.[2] Maurice Salsa filed opposing comments to the counterproposal. Petitioner and Henderson filed a "Joint Motion for Dismissal of the Garland Petition RM-10489, Adoption of Henderson Counterproposal and Approval of Settlement Agreement."

2. In support of his counterproposal, Henderson stated that Bedias is a Census Designated Place with its own post office, zip code (77831), and has a 2000 population of 500 persons (2001 Rand McNally Road Atlas). The town is located in the northeast part of Grimes County, Texas. Bedias is a separately listed community in the local telephone directory and presently lists 15 local businesses and a total of 30 businesses showing a web site in Bedias, with its local affairs and interests governed by a committee of the Bedias Civic Association. There is also a State Bank of Bedias, civic center, a volunteer fire department, along with six churches. Henderson asserts that Bedias is a long-established town and qualifies as a community deserving of a new local radio service. Henderson affirms his intention to apply for Channel 297C3, if reallotted to Bedias, Texas.

[1] *Milano, Texas,* 17 FCC Rcd 12824 (2002).

[2] The counterproposal was technically defective and not placed on Public Notice.

3. The parties submitted for approval a Settlement Agreement whereby petitioner agreed to dismiss his Milano proposal in payment of out-of-pocket expenses expended in the preparation, application, and prosecution of its petition for rule making. The parties also submitted an itemization of said expenses. [3]

4. As an initial matter, we address the reallotment of Channel 297C3 from Caldwell to Bedias which requires, *inter alia,* the allotment of Channel 274A at Caldwell as a replacement service. Henderson stated that using the FCC F(50,50) curve, the 70 dBu contour at maximum facility will serve more than 90% of Caldwell, Texas. He also noted that the terrain roughness (Delta H) of the path from the community to the transmitter site is 15, and that the Longley-Rice analysis shows that the 70 dBu predicted contour travels more than 10% further than the FCC F(50,50) curves on a azimuth toward Caldwell. Engineering studies premised on Alternate Propagation Method(s) such as Longley-Rice are sometimes submitted as a showing to supplement the required analysis based on the Commission's propagation model, "in cases where the terrain. . .departs widely" from the average terrain and the "contour distances are different from what may be expected in practice." See Section 73.313(e). Here, Henderson fails to demonstrate that the terrain around the proposed site for Channel 274A at Caldwell departs widely (in excess of 50 meters Delta H) from the average terrain, other than stating that the Delta H of the path to the transmitter is 15. The F(50,50) curves in Section 73.333 of the Commission's Rules are based on terrain variations up to 50 meters Delta H. Henderson made no showing that it was appropriate to utilize a different propagation methodology. He did not show that the predicted distances to the 70 dBu contour were in question using the F(50,50) curves due to terrain around the proposed site departing widely from the average rolling terrain assumed for those curves.

5. Moreover, the Commission normally does not evaluate specific terrain data in allotment proceedings. Instead, the Commission generally assumes that a station's city grade coverage contour is a circle with a defined radius from a hypothetical transmitter site. Thus, compliance with our city grade coverage requirement is determined by a simple distance calculation. If the far boundary of a community is farther than the length of the circle's radius from the closest hypothetical transmitter site, we will not make the allotment. At the allotment stage, we generally cannot determine what specific transmitter sites will ultimately be applied for, nor whether the petitioner will be the successful applicant. Although the Commission in *Woodstock and Broadway* accepted an alternative methodology for determining signal propagation for upgrades, and more recently for change of community cases, the decision was predicated on the fact that there was an "existing authorization."[4] For this reason, we do not apply this policy to new allotments. When making these exceptions, petitioners have taken the affirmative steps of securing assurances from the proposed site's owner, and have obtained FAA approval for a tower at the proposed site. Petitioners have also submitted substantial evidence that, using our standard prediction method, but relaxing the normal assumption of uniform terrain, its proposed facilities will comply with our principal city coverage requirements. Even if this policy did apply to new allotments, Henderson has failed to show that no alternative transmitter sites are possible, and has not requested a waiver of the city grade coverage requirements. Further, our engineering analysis has determined that there are no terrain variations that would preclude using FCC's standard methodology. Therefore, the allotment of Channel 274A at the site specified is not consistent with Section 73.315 of the Commission's Rules. Since counterproposals must be "technically correct and substantially

[3] In compliance with Section 1.420(j) of the Commission's Rules, Henderson submitted a declaration stating that Petitioner was not paid any consideration of any kind in excess of legitimate and prudent expenses incurred.

[4] *See Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988).

complete" at the time they are filed, we are dismissing the counterproposal for being technically defective. [5]

6. IT IS ORDERED, That the petition for rule making filed by David P. Garland, IS DISMISSED, as requested.

7. IT IS FURTHER ORDERED, That the counterproposal filed by Roy E. Henderson, IS DISMISSED.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Roy E. Henderson
1110 West William Cannon Drive, Suite 402
Austin,Texas 78745-5460
(Licensee of Station KLTR(FM))

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

10. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

[5] *See, e.g., Fort Bragg, California*, 6 FCC Rcd 5817 (1991); *Provincetown, et al., Massachusetts,* 8 FCC Rcd 19 (1992); and *Sanford and Robbins, North Carolina*, 12 FCC Rcd 1 (1997).