

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

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Holdenville and Pauls Valley,
Oklahoma)
MM Docket No. 01-180
RM-10200
RM-11018

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 14, 2005

Released: December 16, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making ("NPRM") issued at the request of Katherine Pyeatt ("Petitioner"); (2) supporting comments filed by the Petitioner; (3) a counterproposal filed by Valley Broadcasters ("VB"); (4) reply comments filed by the Petitioner in response to the Public Notice of VB's counterproposal; and (5) a supplement to reply comments. For the reasons discussed below, we grant the Petitioner's rulemaking petition and dismiss VB's counterproposal.

BACKGROUND

2. At the request of the Petitioner, the NPRM proposed the allotment of Channel 265A to Holdenville, Oklahoma (pop. 4,732) as its third local aural service. The Petitioner filed brief supporting comments, reiterating her continuing interest to file an application to construct an FM station on Channel 265A at Holdenville. As requested in the NPRM, the Petitioner verified that the statements in the petition are accurate to the best of her knowledge.

3. In response to the NPRM, VB filed a counterproposal to allot Channel 266A to Pauls Valley, Oklahoma (pop. 6,256), as that community's second local service. VB's counterproposal is mutually exclusive with the Petitioner's rulemaking proposal because Channel 265A at Holdenville is short-spaced to Channel 266A at Pauls Valley. VB contends that its counterproposal should be favored

1 Holdenville, OK, 16 FCC Rcd 14912 (MMB 2001).

2 The supplement contains a certificate of service that was not included in the Petitioner's reply comments. We will accept this pleading because it will facilitate resolution of this case.

3 Section 1.52 of the Commission's rules requires that all pleadings filed by parties not represented by legal counsel be signed and verified by the petitioner and provide the petitioner's mailing address. Although the Petitioner's rulemaking petition was signed by the Petitioner and included her address, it did not contain a verification statement.

4 See 47 C.F.R. § 73.207. The required spacing between Channel 265A at Holdenville and Channel 266A at Pauls Valley is 72 kilometers whereas the actual spacing is 70 kilometers.

over the Petitioner's rulemaking proposal under the FM Allotment Priorities.⁵ Both proposals trigger Priority 4, other public interest matters; VB argues, however, that Pauls Valley is more deserving of the allotment because it has a significantly larger population and fewer local services than Holdenville.⁶

4. In her reply comments, the Petitioner argues that the allotment of Channel 266A at the site specified in VB's counterproposal is not consistent with Section 73.315 of the Commission's rules because the 70 dBu contour does not completely cover the entire community of Pauls Valley. In support of this position, the Petitioner submitted a technical showing. Because counterproposals must be technically correct and substantially complete at the time they are filed, the Petitioner argues that VB's counterproposal should be dismissed as technically defective.

DISCUSSION

5. Although VB's counterproposal was placed on *Public Notice*,⁷ we agree with the Petitioner that the counterproposal violates Section 73.315 of the Commission's rules because, at the proposed reference coordinates for Channel 266A,⁸ the city-grade (70 dBu) contour does not cover 100 percent of the community of Pauls Valley. Specifically, a staff engineering analysis reveals that the standard predicted 70 dBu contour covers 95 percent of the community. Because VB's counterproposal was not technically correct at the time it was filed, the counterproposal should not have been placed on *Public Notice* and must be dismissed.⁹

6. With the elimination of VB's counterproposal, we will grant the Petitioner's rulemaking petition as consistent with the public interest because it will provide a second local service to Holdenville.¹⁰ As stated in the *NPRM*, Holdenville is an incorporated community that serves as the county seat of Hughes County. Channel 265A can be allotted to Holdenville with a site restriction of 10.6 kilometers (6.6 miles) west of Holdenville.¹¹

7. Accordingly, pursuant to the authority contained 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

⁵ 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 *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁶ See, e.g., *Hallie and Ladysmith, WS*, 10 FCC Rcd 9257, 9258 (MMB 1995) (when comparing proposals for a new radio service to different communities under Priority 4, the Commission bases its determination on the number of existing services and the size of the community to be served). At the time that VB filed its counterproposal, the allotment of Channel 266A at Pauls Valley would have been a second local service at Pauls Valley, and the allotment of Channel 265A would have been a third local service at Holdenville. However, an AM station at Holdenville was subsequently deleted, making the allotment of either Channel 265A at Holdenville or Channel 266A at Pauls Valley a second local service. See *infra* note 10.

⁷ See *Public Notice* on July 15, 2004, Report No. 2664.

⁸ VB's proposed reference coordinates for Channel 266A at Pauls Valley are 34-40-26 and 97-06-06.

⁹ See, e.g., *Broken Arrow and Bixby, OK, and Coffeyville, KS*, 3 FCC Rcd 6507, 6511 n.2 (MMB 1988) (counterproposal dismissed because it did not provide the requisite city-grade coverage); *Cloverdale, Montgomery, and Warrior, AL* 10 FCC Rcd 13630 (MMB 1995), *app. for rev. denied*, 15 FCC Rcd 11050 (2000) (counterproposal for new allotment dismissed because it did not provide a 70 dBu signal over the entire community); and *Fort Bragg, CA*, 6 FCC Rcd 5817 n.2 (MMB 1991).

¹⁰ Station KTLS-FM is currently licensed to Holdenville. At the time that the *NPRM* was released, Station KLIS(AM) was also licensed to Holdenville. However, the license for Station KLIS(AM) was cancelled and the call sign deleted on November 7, 2001, as requested by the licensee.

¹¹ The reference coordinates for Channel 265A at Holdenville are 35-04-53 and 96-31-00.

effective January 30, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Holdenville, Oklahoma	293C3, 265A

8. The window period for filing applications for Channel 265A at Holdenville will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed in a subsequent order.

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. IT IS FURTHER ORDERED, That the petition for rule making filed by Katherine Pyeatt IS GRANTED.

11. IT IS FURTHER ORDERED, That the counterproposal filed by Valley Broadcasters IS DISMISSED.

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

13. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau