

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-310
FM Table of Allotments,)	RM-11292
FM Broadcast Stations.)	RM-11300
(Humboldt and Pawnee City, Nebraska and)	RM-11314
Effingham, Holton, and Valley Falls, Kansas))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 21, 2006

Released: June 23, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division for consideration is a *Notice of Proposed Rule Making*¹ issued at the request of Cumulus Licensing, LLC (“Petitioner”), permittee of an unbuilt station for Channel 244A at Humboldt, Nebraska. In the initiating petition, Petitioner proposes to substitute Channel 245C2 for Channel 244A at Humboldt, reallocate Channel 245C2 to Valley Falls, Kansas, and modify its construction permit to reflect these changes; and to allot Channel 256A at Pawnee City, Nebraska. Petitioner filed an amended petition, which we will treat as a counterproposal, proposing to substitute Channel 245C2 for Channel 244A at Humboldt, reallocate Channel 245C2 to Effingham, Kansas, and modify the construction permit authorization to reflect these changes; allot Channel 272A at Humboldt; and allot Channel 256A at Pawnee City.² Viking Enterprises, LLC (“Viking”) filed a counterproposal proposing to allot Channel 245C2 at Holton, Kansas which requires the substitution of Channel 272A for Channel 244A at Humboldt.³

2. Upon further engineering review, we have determined that the initiating petition for a change of community was technically defective because it failed to comply with Section 1.420(i) of the Commission’s Rules⁴ which requires the new allotment to be mutually exclusive with the existing

¹ *Humboldt and Pawnee City, Nebraska and Valley Falls, Kansas*, Notice of Proposed Rule Making, 20 FCC Rcd 17940 (MB 2005) (“*Notice*”).

² Petitioner’s amended petition, filed on November 8, 2005, was treated as a counterproposal because it was not received by the appropriate staff until after the *Notice* had been issued. Petitioner’s counterproposal was placed on Public Notice on November 25, 2005, Report No. 2744, (RM-11300). Subsequently, Petitioner filed Comments and two different Reply Comments. In addition, C.R. Communications, Inc. submitted a letter requesting additional time beyond the 15-day comment deadline to the Public Notice but did not file any further comments.

³ Viking’s counterproposal was placed on Public Notice on February 16, 2006, Report No. 2760, (RM-11314). Subsequently, Viking filed an Addendum to Counterproposal.

⁴ 47 C.F.R. § 1.420(i).

allotment.⁵ The Channel 245C2 at Valley Falls is not mutually exclusive with the then-authorized Channel 244A construction permit at Humboldt⁶ as specifically required by Section 1.240(i), the request to change the community of license is not acceptable.⁷ Because the *Notice* was defective and erroneously issued, we dismiss the underlying petition for rule making as well as the counterproposals filed by Petitioner and Viking and rescind their public notices.⁸ We also note that Viking's counterproposal is subject to dismissal because of short-spacing to a previously filed application for modification of the construction permit at Humboldt.⁹

3. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Cumulus Licensing, LLC and the counterproposals filed by Cumulus Licensing, LLC and Viking Enterprises, LLC ARE DISMISSED.

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

5. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A) since the proposed rules are dismissed, herein.)

⁵ *See Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (“*Community of License*”) (amending Section 1.420 by adding new paragraph (i) to require mutual exclusivity between present and proposed reallotments), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

⁶ *See* n. 9, *infra*.

⁷ *Community of License*, Report and Order, 4 FCC Rcd at 4873 (“The procedure [for a change of community] is limited to situations in which the new allotment would be mutually exclusive with the existing allotment . . .”).

⁸ *C.f. Boulder Town, Utah, et al.*, Report and Order, 21 FCC Rcd 4850 (MB 2006) (taking additional step of denying a counterproposal on its merits after determining the initial petition was technically defective); *Pitkin, Texas et al.*, Report and Order, 15 FCC Rcd 17311 (MB 2000) (counterproposals considered after specifically finding that initial petition was technically acceptable).

⁹ *See* BMPH-20051206AGG. *See also Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd (1992), *pet. for recon. granted in part* Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993) (generally an application filed first has cut-off protection against competing applications or petitions for rule making whereas an application filed subsequent to a petition for rule making is treated as a counterproposal).

6. For additional information concerning this proceeding, contact Helen McLean, Media Bureau (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

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