

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 09-190
FM Broadcast Stations.)	RM-11566
(Stonewall, Mason, and Santa Anna, Texas))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 17, 2010

Released: February 19, 2010

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (the “Notice”)¹ issued at the request of Katherine Pyeatt (“Petitioner”), requesting the allotment of Channel 280A at Stonewall, Texas, as the community’s first local transmission service. In order to allot Channel 280A at Stonewall, the Notice further sets forth corresponding changes in reference coordinates for two vacant FM channels, Channel 281C2 at Mason, Texas, and Channel 282A at Santa Anna, Texas. Petitioner filed comments reiterating her interest in the allotment of Channel 280A at Stonewall.

2. In response to the Notice, BMP Austin License Company, LP, licensee of Station KXXS(FM), Elgin, Texas, and Border Media Business Trust, the proposed assignee of that station (jointly, “BMP”), filed a “Motion to Rescind Notice of Proposed Rule Making,” and comments opposing the proposal to allot Channel 280A at Stonewall, Texas. In both documents, BMP states that the proposal to allot Channel 280A at Stonewall, Texas, fails to protect a prior-filed and cut-off BMP application for KXXS that includes a proposal to substitute Channel 280A for Channel 223A at Burnet, Texas.²

3. We agree with BMP that its application, filed on August 11, 2009, is entitled to protection against subsequently-filed and conflicting rule-making proposals.³ The Notice in this proceeding was

¹ *Stonewall, Texas*, Notice of Proposed Rule Making, 24 FCC Rcd 12883 (MB 2009).

² See File No. BPH-20090811ACJ. BMP’s application includes a request for an Order to Show Cause to be issued to the licensee of FM Station KBEY, Burnet, Texas, to show why Channel 280A should not be substituted for Channel 223A.

³ See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, Report and Order, 7 FCC Rcd 4917 (1992), *recon. granted in part*, Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993).

issued in response to a petition for rule making filed on August 25, 2009, by Katherine Pyeatt. We have verified that BMP's application for Station KXXS is mutually exclusive with the instant rule-making proposal to allot Channel 280A at Stonewall, Texas. For that reason, the petition for rule making in this proceeding will be denied, and the proceeding will be terminated.

4. Accordingly, IT IS ORDERED, That the petition for rule making filed by Katherine Pyeatt, proposing the allotment of FM Channel 280A at Stonewall, Texas, IS DENIED.

5. IT IS FURTHER ORDERED, That the "Motion to Rescind Notice of Proposed Rule Making," filed by BMP Austin License Company, LP, licensee of Station KXXS(FM), Elgin, Texas, and Border Media Business Trust, IS DISMISSED AS MOOT.

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

7. This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this Order to the Government Accountability Office, pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A), because the proposed rule was dismissed.

8. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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