

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 15-167
Table of Allotments,)	RM-11751
FM Broadcast Stations.)	
(Grant, Oklahoma))	
)	
Application of)	File No. BPH-20141028AAK
Liberman Broadcasting of Dallas Licensee LLC)	Facility ID No. 15854
Station KZMP-FM, Pilot Point, Texas)	
)	
Application of)	File No. BPH-20150831ABE
Southeastern Oklahoma Radio LLC)	Facility ID No. 67592
Station KTMC-FM, McAlester, Oklahoma)	
)	

REPORT AND ORDER

Adopted: June 16, 2016

Released: June 17, 2016

By the Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Notice of Proposed Rule Making and Order to Show Cause issued in response to a Petition for Rule Making filed by Katherine Pyeatt (Pyeatt), proposing the allotment of FM Channel 286A at Grant, Oklahoma,¹ (2) a Counterproposal filed by Southeastern Oklahoma Radio LLC (SOR), licensee of Station KTMC-FM, McAlester, Oklahoma,² (3) Requests for Approval of Withdrawal filed by Pyeatt and SOR; (4) Certifications Regarding Withdrawal filed by Liberman Broadcasting of Dallas Licensee LLC (Liberman), licensee of Station KZMP-FM, Pilot Point, Texas, and SOR; and (5) various related pleadings.³

2. **Background.** The Grant Petition was mutually exclusive with an application for an upgraded facility filed by Liberman for Station KZMP-FM, Channel 285C0, Pilot Point, Texas.⁴ In the *Grant Notice and Order to Show Cause*, we ordered Liberman to show cause as to why Station KZMP-FM should not be modified to specify operation on lower class Channel 285C1 in lieu of Channel 285C0.⁵

¹ *Grant, Oklahoma*, Notice of Proposed Rulemaking and Order to Show Cause, 30 FCC Red 7233 (Aud. Div. 2015) (*Grant Notice and Order to Show Cause*); FCC File No. BNPH-20141029ACJ (filed Oct. 29, 2014) (Grant Petition).

² File No. BPH-20150831ABE (Counterproposal).

³ Pyeatt filed Comments on August 20, 2015 and Reply Comment on September 16, 2015. Liberman filed Comments on August 31, 2015; Response to the Order to Show Cause on August 24, 2015; and Reply Comments on September 15, 2015.

⁴ See FCC File No. BPH-20141028AAK (Pilot Point Application).

⁵ Specifically, on November 26, 2007, Liberman applied for a “one-step” upgrade for KZMP-FM from Channel 285C1 to 285C0 (One-Step Application), which was granted on December 3, 2008. File No. BPH-20071126AJG.

(continued....)

In response to the *Grant Notice and Order to Show Cause*, Pyeatt filed Comments demonstrating her continued expression of interest to allot Channel 286A at Grant, Oklahoma. Liberman in its Response to the *Order to Show Cause* requests that the Bureau maintain the current classification and allotment of KZMP-FM and reject the proposed new allotment at Grant, Oklahoma. In addition, SOR filed its counterproposal proposing to change the community of license of Station KTMC-FM, Channel 286A, from McAlester, Oklahoma, to Krebs, Oklahoma, as a first local service; the proposal conflicts with the Grant Petition.⁶

3. Subsequently, on December 10, 2015, Pyeatt and Liberman entered into a Reimbursement Agreement (Agreement) under section 1.420(j) of the rules.⁷ Under the Agreement, Pyeatt agrees to withdraw the Petition for Rulemaking at Grant and the corresponding application in exchange for reimbursement of her reasonable and legitimate expenses, which are estimated to be \$21,375.41.⁸ Pyeatt and Liberman contend that the Agreement complies with section 1.420(j) because, as documented by affidavits and supporting documentation, Pyeatt has not and will not receive any money or other consideration in excess of her legitimate and prudent expenses.⁹ SOR, in its Request for Withdrawal, requests dismissal of its Counterproposal. In compliance with section 1.420(j), and as documented by an affidavit, SOR states that in exchange for its withdrawal of the Counterproposal it has not entered into any agreement and it will not receive any money or other consideration.¹⁰

4. **Discussion.** We find that the Reimbursement Agreement complies with section 1.420(j) because Pyeatt is withdrawing her Petition for Rulemaking in return for reimbursement of only her itemized and documented expenses incurred in executing the Grant Petition.¹¹ Pyeatt filed a declaration in accordance with section 1.420(j), containing an itemization of reimbursable expenses that have been or will be incurred.¹² We have reviewed these submissions and find them to be legitimate and prudent expenses under the *Circleville* guidelines.¹³ Furthermore, we find SOR's Request for Withdrawal

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The One-Step Application substituted Channel 285C0 for Channel 285C1 at Pilot Point and modified KZMP-FM's license to specify operation on Channel 285C0 in lieu of Channel 285C1. On September 28, 2011, Liberman surrendered the initial construction permit and filed a replacement application for a construction permit to implement the upgrade, which was granted on November 1, 2011 and was due to expire on November 1, 2014. File No. BPH-20110928AJC.

⁶ File No. BPH-20150831ABE.

⁷ 47 C.F.R. § 1.420(j).

⁸ The Audio Division issued an Order of Inquiry to Pyeatt on February 26, 2016 inquiring into Pyeatt's reimbursement expenses and rationale for requesting the withdrawal of her expression of interest for Channel 286A at Grant, Oklahoma. *Grant, Oklahoma*, Order, 31 FCC Rcd 1322 (Aud. Div. 2016). Pyeatt responded on April 11, 2016.

⁹ Pyeatt Request for Approval of Withdrawal, Reimbursement Agreement at 1 (filed Dec. 17, 2015).

¹⁰ SOR Request for Approval of Withdrawal at 1 (filed Dec. 22, 2015).

¹¹ *See, e.g., Crowell, et al., Texas*, Report and Order, 19 FCC Rcd 5347 (Aud. Div. 2004) (approving withdrawal of an expression of interest in an FM allotment proceeding in return for reimbursement of the party's itemized and documented out-of-pocket expenses in prosecuting its proposal).

¹² Pyeatt Request for Approval of Withdrawal at Sworn Affidavit, Reimbursement Agreement, and Exh. A, Itemized Expenses; Pyeatt Response to Order of Inquiry at Appendix A, Engineering Expenses Declaration (filed April 11, 2016); and Liberman Certification Regarding Withdrawal at Certification of Liberman Broadcasting of Dallas Licenses LLC (filed Dec. 18, 2015).

¹³ *See Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159, 163 (1967) (requiring that, whenever an existing station is ordered to change frequency to accommodate another station, the benefiting station must reimburse the affected station for its reasonable and prudent expenses and establishing guidelines for determining reimbursement)(*Circleville*). *See also, Howard M. Weiss, Esq., and Christopher D. Imlay, Esq.*, Letter, 28 FCC Rcd 3234 (Aud. Div. 2013) (approving reimbursement of legitimate and prudent expenses totaling \$75,554 in connection (continued....))

complies with section 1.420(j) because it has not entered into any agreement concerning the withdrawal, nor been paid or promised consideration in exchange for its withdrawal. Therefore, we (1) approve the Reimbursement Agreement pursuant to section 1.420(j); (2) grant the respective Pyeatt and SOR Requests for Withdrawal pursuant to section 1.420(j); (3) dismiss the Grant Petition and terminate the proceeding; (4) dismiss the Counterproposal; and (5) grant the Pilot Point Application.

5. ACCORDINGLY, IT IS ORDERED, that the Request for Approval of Withdrawal filed by Katherine Pyeatt and the Certifications Regarding Withdrawal filed by Liberman Broadcasting of Dallas License LLC and Southeastern Oklahoma Radio LLC ARE GRANTED.

6. IT IS FURTHER ORDERED, that the Counterproposal, filed by Southeastern Oklahoma Radio, LLC and accompanying application, File No. BPH-20150831ABE, ARE DISMISSED

7. IT IS FURTHER ORDERED, that the application for station KZMP-FM to upgrade to Channel 285C0 at Pilot Point, filed by Liberman Broadcasting of Dallas License LLC, File No. BPH-20141028AAK, IS GRANTED

8. IT IS FURTHER ORDERED, that the for Petition for Rule Making filed by Katherine Pyeatt proposing the allotment of FM Channel 286A at Grant, Oklahoma, and accompanying application, FCC File No. BNPH-20141029ACJ, ARE DISMISSED, and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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with an involuntary channel change).