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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 01-131
FM Broadcast Stations.	)	RM-10148
(Benjamin, Texas)	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-133
Table of Allotments,	)	RM-10143
FM Broadcast Stations.	)	RM-10150
(Mason, Texas)	)	

MEMORANDUM OPINION AND ORDER
(Proceedings Terminated)

Adopted: December 18, 2003 **Released: January 8, 2004**

By the Commission:

1. The Commission has before it an Application for Review filed by Charles Crawford ("Crawford") directed to the staff *Memorandum Opinion and Order* involving two separate proceedings.[1] Rawhide Radio, LLC filed an Opposition to Application for Review and Crawford filed a Reply. We have thoroughly reviewed the staff *Memorandum Opinion and Order* and find that there are no errors of law or fact. Accordingly, we deny the Application for Review.

2. The *Notice of Proposed Rule Making* in MM Docket No. 00-148 proposed the allotment of Channel 233C3 to Quanah, Texas.[2] In response to that *Notice,* five radio station licensees ("Joint Parties") jointly filed a timely Counterproposal on October 10, 2000, setting forth interrelated allotment proposals and channel substitutions involving 22 communities in Texas and Oklahoma ("Quanah Counterproposal").[3] On May 18, 2001, filed the Benjamin Petition for Rule Making and on May 25, 2001, filed the Mason Petition for Rule Making. These proposals conflicted with proposed allotments at Knox City and Converse, Texas, set forth in the Quanah Counterproposal. Even though these proposals were not filed by the comment date in MM Docket No. 00-148, they were erroneously docketed and notices of proposed rule making released as a result a staff delay in entering the Quanah Counterproposal into the FM database. The staff subsequently identified the allotment conflicts, determined that the Crawford petitions for rule making should be treated as counterproposals in MM Docket No. 00-148, and dismissed the petitions as untimely. The staff subsequently denied Crawford's consolidated Petition for Reconsideration of the dismissal actions. Crawford now seeks review of the dismissal of these two captioned rulemakings which proposed new allotments in Benjamin and Mason, Texas.

[1] *Benjamin, Texas, and Mason, Texas,* 18 FCC Rcd 103 (Media Bur. 2003).

[2] *Quanah, Texas,* 15 FCC Rcd 15809 (M.M. Bur. 2000).

[3] Section 1.429(d) of the Rules requires a counterproposal to be filed by the specified comment date in a rulemaking proceeding.

3. On review, Crawford argues that he did not have "reasonable notice" that the *Quanah NPRM* could potentially elicit a "humongous" twenty-two community counterproposal that would technically preclude his proposals for allotments at communities 100 and 320 kilometers from Quanah. He argues that he did not have adequate notice as required by Section 553 of the Administrative Procedure Act.[4] Finally, he contends that the initial proposal for Quanah may have been orchestrated by the Joint Parties to foreclose the opportunity to file counterproposals against the Quanah Counterproposal.

4. The staff properly determined that the Crawford petitions were untimely. Allotment cut-off procedures and the need for these procedures are clear and well established.[5] Every FM allotment notice of proposed rule making specifically alerts interested parties of the possible filing of counterproposals involving new communities and alternative channels and the preclusive effect that such counterproposals may have on alternative proposals.[6] Co-channel proposals require separations of up to 290 kilometers.[7] As noted by the staff below, counterproposals frequently involve multiple communities and channels. Interested parties routinely file potentially conflicting proposals at the comment deadline because they recognize that a single rulemaking can have a substantial preclusionary impact over a broad geographical area. Crawford's claim is not well taken in this proceeding which involves allotment counterproposals only 100 and 320 kilometers distant from Quanah. We conclude that the dismissal of his petitions due to conflicts with the *Quanah NPRM* complies with APA requirements.[8] Finally, we agree with the staff that there is nothing in the record of this proceeding which would support Crawford's allegation of collusive conduct between the Joint Parties and the original proponent for the Channel 233C3 allotment at Quanah.
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5. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Charles Crawford IS DENIED.

[4] 5 U.S.C. §553(b)(3).

[5] *See Implementation of BC Docket No. 80-90 to Increase the Availability of Broadcast Assignments,* 62 RR 2d 535 (1987); *see also Pinewood, South Carolina,* 5 FCC Rcd 7609 (1990).

[6] Because a notice of proposed rule making in a channel allotment proceeding specifically elicits counterproposals and alerts interested parties that alternate channels may be substituted for either the original proposal or the counterproposal, both the actual counterproposal advanced by the proponent and any alternate channel are within the scope of the notice. Parties contemplating the filing of a petition for rule making that may conflict with an alternate channel for the original community or a community that may be specified in a counterproposal must do so by the comment date in order to have their proposal considered as part of that proceeding. We are not required by the Administrative Procedure Act to issue separate notices for every channel under consideration. The release of the *Notice of Proposed Rule Making* in MM Docket No. 00-148 placed all parties on constructive notice that a rulemaking proceeding was occurring regarding the communities at issue and that an alternative, potentially preclusive allotment could occur.

[7] 47 C.F.R. § 73.207(b).

[8] *See Pinewood, South Carolina, supra.* Our FM allotment procedure also meets the "logical outgrowth" test applied by the Court of Appeals to determine whether a rulemaking action was based upon adequate notice and opportunity for public participation. S*ee Weyerhaeuser Company v. Costle,* 590 F. 2d 1011, 1031 (D.C. Cir. 1978); *Owensboro on the Air v. United States,* 262 F. 2d702 (D.C. Cir. 1958).

6. IT IS FURTHER ORDERED, That MM Docket No. 01-131 and MM Docket No.01-133 ARE HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary