

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

MM Docket No. 91-193

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Corpus Christi and Three Rivers, Texas)	RM-7717 RM-7822
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MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: December 7, 1995; Released: January 19, 1996

By the Chief, Policy and Rules Division:

1. The Commission has before it the petition for reconsideration filed by Reina Broadcasting, Inc. ("Reina"), licensee of Station KBSO(FM), Corpus Christi, Texas, of the *Report and Order*, 8 FCC Rcd 1375 (1993) ("R&O"), which allotted channel 233C2 to Three Rivers, Texas, as the community's first local transmission service.¹ For the reasons stated below, we will dismiss the petition for reconsideration.

2. *Background.* This proceeding began with the filing of a petition for rule making by Reina proposing the substitution of Channel 234C2 for 234A at Corpus Christi and the modification of the Station KBSO(FM) construction permit accordingly.² Three Rivers Communications ("TRC") filed a counterproposal proposing the allotment of Channel 233C2 at Three Rivers, Texas, as the community's first local transmission service. Both Reina and TRC filed reply comments.³

3. Reina's reply comments included a "proposed alternative resolution" requesting that we grant its proposal to substitute Channel 234C2 at Corpus Christi and allot Channel 228C2, rather than 233C2, at Three Rivers. This proposal also required that we either substitute Channel 264A for vacant Channel 228A at Carrizo Springs, Texas, or delete the channel. The *R&O* found that Reina's introduction of Carrizo Springs in its proposed resolution constituted a counterproposal, and that since the pleading was filed after the comment deadline had expired, it was

untimely and unacceptable for consideration. The *R&O* held that, contrary to Reina's argument, *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990), was not applicable because Reina's alternative suggestion introduced a new community after the time for filing counterproposals had expired. The *R&O* also held that, even if Reina's counterproposal had been timely filed, it was unacceptable for consideration because it was mutually exclusive to the previously proposed allotment of Channel 228C3 at George West, Texas, and proposed a site for Channel 228C2 at Three Rivers which was short-spaced to Station KSRR-FM, San Antonio, Texas, and Station KPLV(FM), Port Lavaca, Texas. Accordingly, we considered the proposals comparatively and allotted Channel 233C2 to Three Rivers as the community's first transmission service.

4. *Petition for reconsideration.* On reconsideration, Reina argues that its proposal was not an untimely counterproposal, but rather, a timely filed "alternative resolution," consistent with *Pinewood*. Reina argues that it filed its request at the earliest possible time because it was responding to the TRC counterproposal, whose filing it could not have predicted earlier. Reina also suggests that the George West filing was timed in such a way as to preclude its alternate suggestion, and thus may have been filed as a strike petition. Furthermore, Reina argues, it was deprived of due process when its proposal, fully spaced when filed, was not entered into the FCC database and became short-spaced to subsequently filed proposals.⁴

5. *Discussion.* After careful consideration of Reina's petition for reconsideration, we believe that its proposal to allot Channel 228C2 at Three Rivers, in lieu of Channel 233C2 as proposed in TRC's counterproposal, and to make a related channel substitution or deletion at Carrizo Springs is not the type of "alternative resolution" that is permitted under *Pinewood*. In that case, the Commission acted on an application for review and specifically stated that it is appropriate to suggest in reply comments alternate channels for communities at issue in a proceeding. However, the Commission also concluded that it is not appropriate, after the expiration of the comment period, to offer a suggestion regarding a new community not previously at issue in the proceeding. See 5 FCC Rcd at 7610; see also *Ashland, California, Rolla and Monroe City, Missouri*, 8 FCC Rcd 1799 (1993) (settlement agreement not accepted because it introduced a new community after deadline for filing counterproposals), *recon. granted on other grounds*, 9 FCC Rcd 2306 (1994). To allow otherwise would prejudice parties who would be deprived of notice and opportunity to comment on proposals involving new communities as required by the Administrative Procedure Act. The Commission would also be burdened by having to issue a Further Notice of Proposed Rule Making on these new communities or to initiate another rulemaking proceeding on these questions. Furthermore, such a result would pre-

¹ Public Notice of the filing of the petition for reconsideration was given on April 27, 1993, Report No. 1936.

² On January 25, 1993, the Commission granted Reina's application (File No. BLH-920720KG) for license to cover construction permit (File No. BPH-880310NV) for Station KBSO(FM) on Channel 234A. On October 17, 1994, the Commission granted Reina's application (File No. BPH-9403291A) for construction permit to upgrade on Channel 234C3, and on September 6, 1995, the Commission granted its application (File No. BLH-950314KA) for license to cover construction permit.

³ The parties also filed joint further reply comments request-

ing a change in reference coordinates at Three Rivers. These comments were accepted, despite being untimely, and the request granted.

⁴ Reina also argues that its alternative proposal for Three Rivers is not short-spaced to Station KSRR-FM, but that the Commission used the incorrect coordinates for Channel 228C2 for Three Rivers. Reina is correct on this point. The reference coordinates allotted in this docket for Three Rivers are clear to KSRR-FM. Furthermore, Station KSRR-FM has been downgraded to Channel 225C1.

clude the efficient conduct of the Commission's business which requires that parties adhere to cut-off dates and refrain from filing limitless responsive pleadings.

6. Finally, since Reina's suggestion was defective *ab initio*, and properly dismissed, it was not required to be placed in the FCC database. Such proposals are routinely omitted from the FCC database, since there is no reason to protect a defective proposal, and thus no deprivation of rights as to its consideration occurred. With respect to Reina's inference that the George West petition was filed as a strike petition in contravention of the Commission's rules, Reina offers no basis for such a conclusion, and we see none. Since this allegation is without substantiation, we will not consider it further.

7. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Reina Broadcasting, Inc., IS DENIED.

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

9. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
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Mass Media Bureau