

**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. 02-335
FM Broadcast Stations.)	RM-10545
(Hart, Pentwater, Coopersville, Frankfort)	
and Garfield Township, Michigan))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 1, 2004

Released: September 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company (“Fort Bend”) directed to the *Report and Order* in this proceeding.¹ Northern Radio of Michigan, Inc. (“Northern Radio”) and Watz Radio, Inc. (“WATZ Radio”) each filed an Opposition to Petition for Reconsideration and Fort Bend filed a Consolidated Reply to Oppositions. For the reasons discussed below, we deny the Petition for Partial Reconsideration

Background

2. At the request of Waters Broadcasting Corporation, licensee of Station WCXT, Channel 287C2, Hart, Michigan, and Synergy Media, Inc., licensee of Station WWKR, Channel 231C3, Pentwater, Michigan, the *Notice of Proposed Rule Making* in this proceeding proposed the substitution of Channel 287B for Channel 287C2 at Hart, Michigan, reallocation of Channel 287B to Coopersville, Michigan, and modification of the Station WCXT license to specify operation on Channel 287B at Coopersville.² In order to maintain local service at Hart, the *Notice* also proposed the reallocation of Channel 231C3 from Pentwater, Michigan, to Hart, and modification of the Station WWKR license to specify Hart as its community of license. In response to the *Notice*, Fort Bend filed a Counterproposal proposing the substitution of Channel 257C1 for Channel 257C2 at Frankfort, Michigan, reallocation of Channel 257C1 to Garfield Township, Michigan, and modification of its Station WBNZ license to specify operation on Channel 257C1 at Garfield Township. In order to replace the loss of the sole local service from Frankfort, Fort Bend proposed the allotment of Channel 227A to Frankfort as a “backfill.” To accommodate Channel 227A at Frankfort, Fort Bend proposed a series of channel substitutions including the substitution of Channel 287A for Channel 227A at Glen Arbor, Michigan. The proposed Channel 287A substitution at Glen Arbor conflicted with the proposed Channel 287B allotment at Coopersville as well as the Station WCXT license on Channel 287C2 at Hart.

¹ *Hart, Pentwater and Coopersville, Michigan*, 19 FCC Rcd 1886 (MB 2004).

² *Hart, Pentwater and Coopersville, Michigan*, 17 FCC Rcd 22086 (MB 2002).

3. The *Report and Order* substituted Channel 287B for Channel 287C2 at Hart, reallocated Channel 287C2 to Coopersville as a first local service and modified the Station WCXT license to specify operation on Channel 287B at Coopersville.³ In doing so, we dismissed the Fort Bend Counterproposal. We dismissed this Counterproposal for two reasons. First, the proposed Channel 287A substitution at Glen Arbor was short-spaced to the Station WCXT license on Channel 287C2 at Hart in contravention of Section 73.208 of the rules. Second, the Counterproposal proposed the allotment of Channel 227A to Frankfort as a backfill to the removal of the sole local service at Frankfort. In this regard, the Commission had specifically instructed the staff to cease this practice.⁴ Thereafter, Fort Bend filed a Petition for Partial Reconsideration directed against the dismissal of its Counterproposal.

4. In support of its Petition for Partial Reconsideration, Fort Bend contends that its Counterproposal was a valid counterproposal and entitled to consideration in this proceeding. Fort Bend also argues that since its Counterproposal was filed prior to the Commission decision in *Pacific Broadcasting of Missouri LLC, supra*, that decision should not apply retroactively in this proceeding and it should be permitted to propose allotting Channel 227A to Frankfort as a replacement service. In this instance, Fort Bend argues that reversing the long-standing policy and instituting a new policy retroactively requires a notice and comment rulemaking proceeding.

5. We deny the Petition for Partial Reconsideration. The Fort Bend Counterproposal is not an acceptable counterproposal in this proceeding because it conflicts with the Station WXCT license on Channel 287C2 at Hart and is therefore contingent on Channel 287C2 being removed from Hart.⁵ This is fatal to the Fort Bend Counterproposal notwithstanding the fact that the Counterproposal may also be in conflict with the underlying proposal for a Channel 287B allotment at Coopersville. We continue to believe that it would not be conducive to the efficient transaction of allotment proceedings to accept contingent proposals into a proceeding that could not be granted unless a separate proposal is granted. We also reject the Fort Bend argument that we could not retroactively modify our backfill policy in resolving pending rulemaking proceedings. On June 16, 2004, the Commission released a *Memorandum Opinion and Order* denying a Petition for Reconsideration filed by Pacific Broadcasting of Missouri, LLC.⁶ In doing so, the Commission rejected the identical arguments advanced by Fort Bend in this proceeding. The Commission specifically determined that it has the authority to cease the application of a policy, even in pending cases, when the policy becomes contrary to the public interest. Even though the change in policy upsets the expectation that current rules and policies will continue, the Commission stated that this does not constitute unlawful retroactive rule making.

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company IS DENIED.

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

³ We allotted Channel 287C2 at Coopersville at an alternate transmitter site that could permit Fort Bend to refile its proposal once a replacement service is authorized at Frankfort.

⁴ *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291 (2003), *recon. denied*, 19 FCC Rcd 10950 (2004).

⁵ See *Ironton, Malden and Salem, Missouri*, 13 FCC Rcd 6584 (MMB 1998); *Indian Springs, Nevada, Mountain Pass, California, Kingman, Arizona, and St. George, Utah*, 14 FCC Rcd 10568 (MMB 1999).

⁶ *Pacific Broadcasting of Missouri LLC, supra*.

8. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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