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NOV 13 1991

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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November 6, 1991

FCC MAIL BRANCH

Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

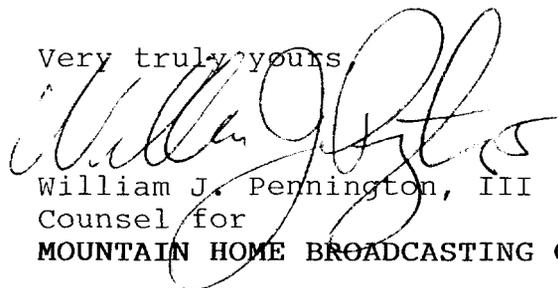
Re: Rule Making seeking channel
upgrade for station KTLO(FM)
Mountain Home, Arkansas.

Dear Ms. Searcy:

On behalf of Mountain Home Broadcasting Corporation, there are transmitted herewith an original and four copies of a "Petition for Rule Making" seeking the substitution of Channel 250C3 for Channel 252A at Mountain Home, Arkansas.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



William J. Pennington, III
Counsel for
MOUNTAIN HOME BROADCASTING CORPORATION

Enclosure
Copies to: Cert. of Service

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NOV 13 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Mountain Home, Arkansas))

MM Docket No.
RM-

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NOV 13 1991

To: Chief, Allocations Branch

FCC MAIL BRANCH

PETITION FOR RULE MAKING

Mountain Home Broadcasting, Corporation ("MHBC"), licensee of Station KTLO-FM, Mountain Home, Arkansas, by their counsel, hereby respectfully requests that the Commission amend Rule 73.202(b), the FM Table of Allotments, to substitute Channel 250C3 for Channel 252A at Mountain Home, Arkansas. MHBC further requests that its license be modified to specify operation as a C3 facility on Channel 250. KTLO-FM presently operates as a Class A facility on Channel 252A.

In support of this allocation request, the following information is respectfully submitted:

1. As is demonstrated in the attached Exhibit 1, Channel 250C3 may be allotted to Mountain Home, Arkansas at its present transmitter site if a channel substitution is made at Yellville, Arkansas.

2. In support of the proposed substitution at Yellville, MHBC notes that the Commission has on numerous occasions stated

that the "substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of new or expanded service at another community." Eddyville and Fort Madison, Iowa, 4 FCC Rcd 7774 (1989); see also Marietta, Ohio and Ravenswood, WV 2 FCC Rcd 4681 (1987) and Albany, NY, et al., 2 FCC Rcd 4300 (1987), 3 FCC Rcd 4681 (1987).

3. The circumstances surrounding the allotment of Channel 249C2 at Yellville makes this request for substitution of channels in that community rather unique. Channel 249C2 was substituted for Channel 249A at Yellville in the Report and Order in MM Docket No. 87-565, released on September 30, 1988. The petitioner for the channel substitution at Yellville was Scott Miller, who was the licensee and operator of Station KCTT-FM. Mr. Miller had earlier purchased KCTT-AM-FM from Adams Broadcasting in 1986. After receiving the Report and Order allowing for the channel substitution for KCTT-FM, no application was filed with the Commission seeking a construction permit for operation as a C2 facility. The Commission plainly states on each report and order involving an upgrade, that an application must be filed within ninety days of the effective date. Furthermore, as of this date no application has been filed with the Commission requesting a construction permit for C2 operation of KCTT-FM. It has now been over three years since Channel 249C2 was substituted for Channel 249A at Yellville.

4. The circumstances surrounding the operation of

KCTT-AM-FM may suggest why no application has ever been filed for an upgrade of facilities to C2 classification. It is known, and supported by Exhibit 3, the affidavit of Bob Dean Knight, General Manager and principal in MHBC, that Mr. Miller left Yellville in December 1989. The affidavit further states that Mr. Miller left town without notice, leaving KCTT-FM completely unattended with its automation system and transmitting facilities operating.

5. A check of the Commission's files shows that Mr. Miller had a transfer of KCTT-AM-FM to A&J Broadcasting Co. approved by the Commission on August 22, 1989. Commission records show that the transfer was never consummated. Therefore, Mr. Miller is still the licensee of KCTT-AM-FM. According to Mr. Knight's affidavit, Mr. Miller is believed to be employed by a radio station in Fayetteville, Arkansas, never returning to Yellville where he is still the licensee of KCTT-AM-FM.

6. Mr. Knight states in his affidavit that KCTT-AM-FM is currently on the air and being operated by a Mr. John Adams, one of the former principals in Adams Broadcasting Co.

7. MHBC understands that the Commission has been reluctant to enforce the 90 day period for filing minor change applications pursuant to a report and order. However, the facts surrounding the present Petition for Rule Making are quite clear in showing that if there ever was any requisite intent by the Yellville petitioner to upgrade KCTT-FM, it certainly left town with Mr. Miller when he totally abandoned the station in December of 1989. The facts strongly suggest that at no time did Miller have the

financial means necessary to upgrade KCTT-FM, as instituting C2 operation would have meant locating the station's transmitter site some 17.6 miles to the west of Yellville. The upgrade would have demanded, at the very least, a new transmitter, tower, tower site and studio transmitter link. Moreover, since Mr. Miller abandoned the operation it is reasonable to believe that the station's financial situation has not improved and most likely has deteriorated even further.

8. KTLO-FM can only meet applicable Commission spacing requirements for C3 operation on Channel 250 if another channel is substituted for Channel 249C2 at Yellville. MHBC has run extensive engineering studies in an effort to find another C2 channel which can be allotted to Yellville in lieu of Channel 249C2. No equivalent channel has been found for a substitution at Yellville. Exhibit 2 demonstrates though that Channel 271A may be substituted for Channel 249C2.

9. MHBC realizes that Channel 271A is not an equivalent channel to Channel 249C2, but asserts that due to the unique circumstances surrounding this situation that no harm would be done to the licensee of KCTT-FM, as there obviously is no further intention to construct a C2 facility in Yellville. It is equally apparent that neither the actual licensee, Miller, or the party who is operating the station have the funds which would be necessary to apply for, construct and operate a C2 facility at Yellville.

10. The continued allotment and nonuse of Channel 249C2 at

Yellville amounts to an inefficient use of the spectrum and is certainly not in the public interest. The nonuse of Channel 249C2 at Yellville is unjustly denying KTLO-FM at Mountain Home, a stable and community minded station, the opportunity to expand its service area. The Commission has determined that expanded service to the public and spectrum efficiency provide significant public service benefits. See Report and Order in MM Docket No. 85-313, 60 RR 2d 114, 118 (1986). Thus, MHBC's proposal to upgrade on Channel 250C3 would be in the public interest.

11. An upgrade for KTLO-FM on Channel 250C3 would allow the station to better serve the residents of not only Mountain Home and Baxter County but Yellville and Marion County, Arkansas as well. Although KTLO-FM programs local news and information to Yellville and Marion County, the station is not able to serve that area as completely as it could due to the limitations of its Class A facility. Yellville, barely a town of 1,000 persons, can be adequately served by a Class A facility. The small size of the Yellville, combined with its rather isolated location, brings into question the ability of a C2 facility, if constructed, being an economically viable venture for any party. Should the Commission grant MHBC's proposal, MHBC agrees to reimburse Miller for its reasonable expenses incurred in changing to Channel 271A. Thus, the Commission should issue an Order to Show Cause to Miller to show why its license should not be modified as proposed herein.

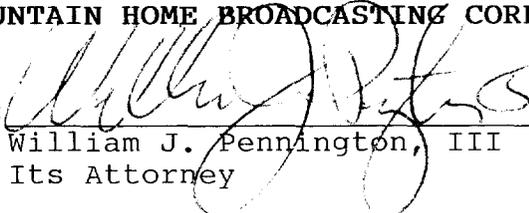
12. Because Channel 250C3 would not be available to a third

party for use at Mountain Home, MHBC's license may be modified to specify operation on the higher class channel pursuant to Rule 1.420(g). Upon grant of this request, MHBC will proceed promptly with construction of its upgrade.

13. Based upon the foregoing, MHBC hereby requests that the Commission: (i) due to the unique circumstances surrounding this proposal, waive its policy of not enforcing the ninety day period for filing minor change applications pursuant to a report and order; (ii) substitute Channel 250C3 for Channel 252A at Mountain Home, Arkansas and modify the license of station KTLO-FM accordingly; and (iii) substitute Channel 271A for Channel 249C2 at Yellville, Arkansas and modify the license of station KCTT-FM accordingly.

Respectfully submitted,

MOUNTAIN HOME BROADCASTING CORPORATION

By: 

William J. Pennington, III
Its Attorney

Post Office Box 4203
Wilmington, NC 28406
(919) 762-7898

November 6, 1991

Exhibit 1
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FM SPACING STUDY

NOV 13 1981

JOB TITLE: MOUNTAIN HOME, AR
CHANNEL: 250C3
COORDINATES: 36-20-55 92-23-59

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Call	Channel	City	State	Bear'	Dist'	R'grd	Margin
ALC	249C2	Yellville	AR	256.7	55.42	117.0	-61.58**(1)
KCTT-FM	249A	Yellville	AR	249.8	28.23	89.0	-60.77**(1)
KTLO-FM	252A	Mountain Home	AR	0.0	0.0	42.0	-42.00**
ALC	251A	Cabool	MO	15.2	90.19	89.0	1.19
KXUS(CP)	247C	Springfield	MO	329.1	108.33	96.0	12.33
KZBB	250C	Poteau	OK	235.5	250.25	237.0	13.25
ALC	249C2	Augusta	AR	143.3	161.29	117.0	44.29
DEL	251C	Osceola	AR	116.1	222.07	176.0	46.07
ADD	251C	Millington	TN	116.1	222.07	176.0	46.07
KPYR(CP)	251C	Osceola	AR	116.1	222.07	176.0	46.07
KXUS	247C1	Springfield	MO	321.4	126.56	76.0	50.56
KXUS(APP)	247C1	Springfield	MO	321.4	126.56	76.0	50.56
KABK-FM	249C2	Augusta	AR	152.7	167.88	117.0	50.88
KABK-FM	249A	Augusta	AR	143.9	142.21	89.0	53.21
KKLL-FM	250A	Webb City	MO	295.1	197.58	142.0	55.58

- (1) Proposed substitution of Channel 271A for Channel 249C2 at Yellville, Arkansas. The substitution would eliminate any short spacing with the Mountain Home upgrade on 250C3.

Exhibit 2

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NOV 13 1961

FM SPACING STUDY

JOB TITLE: YELLVILLE, AR
CHANNEL: 271A
COORDINATES: 36-15-49 92-41-31

FCC MAIL BRANCH

Call	Channel	City	State	Bear'	Dist'	R'qrd	Margin
ADD	271A	Brookline	MO	326.9	119.16	115.0	4.16
KISK(APP)	270C2	Lowell	AR	276.6	115.07	106.0	9.07
KTXR	268C	Springfield	MO	348.2	105.54	95.0	10.54
KISK(CP)	270C2	Lowell	AR	279.9	116.65	106.0	10.65
KCMH	218A	Mountain Home	AR	88.0	24.25	10.0	14.25
KJBR(CP)	270C	Jonesboro	AR	100.8	183.09	165.0	18.09
KKDY	273C2	West Plains	MO	56.5	85.58	55.0	30.58
APP	271A	Sherwood	AR	164.5	165.48	115.0	50.48
KWKK	272A	Dardanelle	AR	203.9	125.70	72.0	53.70
ALC	271A	Sherwood	AR	166.2	170.21	115.0	55.21
KJBR	270C1	Jonesboro	AR	104.4	188.81	133.0	55.81
APP	271A	Sherwood	AR	167.4	172.79	115.0	57.79
ADD	270C1	Eldon	MO	6.5	201.41	133.0	68.41

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COUNTY OF BAXTER)
STATE OF ARKANSAS)

SS:

BOB DEAN KNIGHT, being duly sworn upon oath deposes and says:

That he is General Manager of radio stations KTLO-AM-FM in Mountain Home, Arkansas and principal of Mountain Home Broadcasting Corporation, licensee of the two stations.

That he has been associated with KTLO-AM-FM continuously for at least twenty years and has been knowledgeable and aware of happenings in the broadcast business in North Central Arkansas for at least that period of time.

That a Mr. Scott Miller purchased radio stations KCTT-AM-FM at Yellville, Arkansas from Adams Broadcasting in 1986 and operated the stations until December of 1989, when he left town without notice leaving both the studio and transmitting facilities of KCTT-FM unattended and operating.

That to his knowledge, Mr. Miller has never returned to Yellville to resume his operation of KCTT-AM-FM.

That he believes that Mr. Miller is employed by a radio station in Fayetteville, Arkansas.

That KCTT-AM-FM is currently being operated by John Adams, a principal in Adams Broadcasting which sold KCTT-AM-FM to Miller.

That he believes that it is unjust, and not in the public interest, to allow Channel 249C2 to remain allotted to Yellville when there appears to have been no intention or ability over the past three years to file an application for a C2 upgrade.

That he believes that it would be in the public interest to allow KTLO-FM to upgrade on Channel 250C3 allowing his station to expand its coverage area and better serve the listening public.

Bob Dean Knight
Bob Dean Knight

Subscribed and sworn to before me this 31st day of October, 1991.

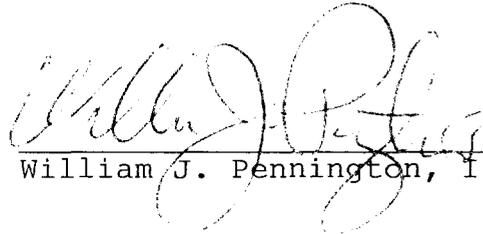
My Commission Expires 9-18-99

Dewey B. Haworth
Notary Public

CERTIFICATE OF SERVICE

I, William J. Pennington, III, do hereby certify that on this 6th day of November, 1991, I have caused to be mailed, via first class mail, postage prepaid, a copy of the foregoing "Petition for Rule Making" to the following:

Radio Station KCTT-FM
General Delivery
Yellville, AR 72687

A handwritten signature in cursive script, appearing to read "William J. Pennington, III", is written over a horizontal line.

William J. Pennington, III