

BEFORE THE

ORIGINAL

ORIGINAL
FILE

Federal Communications Commission

RECEIVED

WASHINGTON, D.C. 20554

APR - 6 1992

In the Matter of)
)
 Amendment of Section 73,202(b))
 Table of Allotments)
 FM Broadcast Stations)
 (Hazard, Hyden, and London)
 Kentucky)
)

Federal Communications Commission
Office of the Secretary

RM-7900

MM Docket No. 92-23

To: Allocations Branch

COMMENTS OF HAZARD BROADCASTING SERVICES, INC.

Hazard Broadcasting Services, Inc. ("HBSI") the licensee of Class A FM Broadcast Station WJMD, Hazard, Kentucky, by its attorneys, hereby files its comments in opposition to the Notice of Proposed Rule Making And Order To Show Cause released in the above captioned proceeding on February 12, 1992.

In support thereof, the following is respectfully submitted.

1. The Notice and Order in this proceeding was issued in response to a petition by Ethel Huff, seeking to upgrade Station WYGE(FM), London, Kentucky, from a Class A station operating on Channel 223 to a Class C3 station operating on Channel 222. In order to accommodate this requested upgrade, severely disruptive changes would be required in the channel assignments of two operating stations. Specifically, it is proposed to modify the license of Station WJMD(FM), Hazard, Kentucky to specify operation on Channel 223A, sixty-one channels removed from its present operation on Channel 284A. Station WJMD's existing Channel 284A

No. of Copies rec'd 049
 List A B C D E

would be taken over by Station WZQQ, Hyden, Kentucky which would be required to change operation from its existing Channel 222A in order to free-up Channel 222 for Huff's unbuilt Station WYGE.

2. These multiple changes in the operations of two existing stations would be extremely disruptive to FM broadcast service in the Hazard-Hyden, Kentucky area and would threaten the demise of Station WJMD for economic reasons, as pointed out more specifically below. Therefore, HBSI opposes the proposed rule making and strongly objects to the proposed modification of its license to change the operation of Station WJMD from Channel 284A to Channel 223A.

3. Hazard Broadcasting Services constructed Station WJMD which began broadcast operations in July, 1989. Since its beginning, WJMD has been a family owned and operated station. The licensee corporation is owned 100% by Michael R. Barnett who is its president and also serves as WJMD's General Manager. He devotes more than fifty hours of his time each week to the station, including a daily 6:00 - 10:00 A.M. air shift. His wife, Lema Barnett, is WJMD's program director and bookkeeper. Their seventeen year old daughter, Rae Ann Barnett, also works at WJMD.

4. Hazard, Kentucky, with a population of only 5,416 persons is located in an economically depressed, coal mining market. In addition to Station WJMD, Hazard has licensed to it two other FM stations and two AM stations. Station WSGS, Hazard, is a 100,000 watt FM station and is co-owned and simulcasts with Station WKIC(AM), Hazard, which operates with a power of 5,000 watts,

daytime. In addition, Non-Commercial Educational FM Station WEKH, licensed to Eastern Kentucky University, operates on Channel 215 at Hazard with a power of 33,000 watts and an antenna height of 1,005 feet and Commercial AM Station WQXY, Hazard, operates on 1560 kHz with a power of 1,000 watts daytime only.

5. Hyden, Kentucky with a population of only 375 persons is located twelve miles from Hazard and has two broadcast stations licensed to it; AM Station WSLK is authorized to operate on 1600 kilohertz with a power of 1,000 watts, daytime, and class A FM Station WZQQ. Because of Hyden's tiny population and due to its proximity to Hazard, any Hyden station must rely upon Hazard for listening audience and advertiser support. In fact, Station WZQQ identifies itself on the air as a "Hyden - Hazard" station. Thus, in addition to Station WJMD the Hazard market has assigned to it six other broadcast stations.

6. Since it began operations in 1989, WJMD has presented religious and family oriented programming. Due to the small size of the Hazard market, the fact that it has been in a persistent economic depression because of its primary reliance upon the slumping coal industry, and due further to the relatively high number of broadcast stations in the market, (4 FM stations and three AM stations), Station WJMD has suffered serious economic problems from its inception. At the present time WJMD's economic status is marginal at best.

7. HBSI believes that if WJMD is replaced on its existing channel by one of its local competitors, as proposed, it will cause

WJMD's demise. Thus, HBSI has opposed the Huff proposal to force WJMD to vacate its present channel from the first time it was brought to its attention.

8. Approximately six months ago, Mr. Barnett was visited by Mr. Gene Huff at WJMD's studios in Hazard, Kentucky. At that time Mr. Huff identified himself as the permittee of a new FM station at London, Kentucky and sought Mr. Barnett's consent to a change of channels for Station WJMD to permit an upgrade of Huff's London station. Mr. Barnett told Mr. Huff at that time that he was opposed to having WJMD change channels. Mr. Huff, who is a Kentucky State Senator and a clergyman, advised Mr. Barnett in that initial visit of his plans to program the new London FM station in a religious format, the same programming which WJMD has presented since it began operations in 1989.

9. Mr. Huff followed up his first visit with a letter to Mr. Barnett concerning this matter dated July 1, 1991 on Commonwealth of Kentucky, State Senate, stationery and signed by Mr. Huff as "State Senator." (See Attachment No. 1 hereto) Mr. Huff's letter to Mr. Barnett forwarded a copy of an engineering proposal which is now the subject of the instant rule making proceeding. That engineering proposal was contained in a letter addressed to Senator Gene Huff dated June 21, 1991 from Charles M. Anderson, Broadcast Consultant. (See Attachment No. 2 hereto)

10. Gene Huff next contacted Mr. Barnett regarding this matter at the Emergency Room of the University of Kentucky Medical Center in Lexington, Kentucky on December 18, 1991 at a time when

Mr. Barnett was visiting his daughter, a student at the University and an Emergency Room patient on that day. Mr. Barnett again told Mr. Huff that he was opposed to a change in channels for Station WJMD as "not being a good thing" for that station.

11. Mr. Huff persisted in his quest of the matter by again presenting himself to Mr. Barnett at the University of Kentucky Medical Center on the next day, December 19, 1991, when Mr. Barnett was visiting his daughter who had been admitted as a patient there the previous day. In the face of Mr. Huff's insistence on talking to Mr. Barnett about this change of channels matter at a time of personal family crises for Mr. Barnett, Mr. Barnett again advised Mr. Huff that he was opposed to a change of channels for WJMD as "not a good thing" for the station.

12. Apparently, Gene Huff has an interest in WYGE which has not been disclosed to the Commission. He holds himself out as the permittee of WYGE and acts as the moving force behind that station. The first time that Mr. Barnett was aware that the "official" permittee of WYGE was Ethel Huff and not Gene Huff, was when HBSI was served with a copy of the petition for rule making in this proceeding in January 1992. Consistently, it has been Gene Huff who has attempted to obtain WJMD's consent to the channel changes proposed in this rule making proceeding on behalf of Station WYGE. No one connected with WJMD ever has been contacted regarding this matter by Ethel Huff, the purported permittee of Station WYGE.

13. As indicated above, the multi-channel changes in existing FM stations proposed to accommodate WYGE's upgrade would be

extremely disruptive to existing broadcast service to the public in the Hazard, Kentucky area and would spell economic disaster for Station WJMD. Thus, grant of the proposed rule making and modification of WJMD's license would result in denigration, and not improvement, of broadcast service to the public in Kentucky.

14. Under the proposal as framed, Station WJMD would be forced to vacate its existing Channel 284A and would be replaced on that channel by its competitor, Station WZQQ, already identified as a Hazard-Hyden, Kentucky station. Station WJMD would be forced to move to the other end of the FM dial, from 104.7 megahertz (Channel 284) to 92.5 Megahertz (Channel 223), a full sixty-one channels removed from its present location. Thus, for all practical purposes, WJMD would seem to its listeners to disappear from the air and would be replaced on the FM dial by one of its local competitors.

15. This serious disruption of WJMD's broadcast service would be imposed merely to allow for the intrusion into the Hazard market of the new powerful, C3 Station WYGE presenting the same type of religious programming which WJMD has broadcast since it began operations. Thus, WJMD would be dealt a triple economic blow. First, it would disappear from its well established presence on the FM dial at Channel 284 and be relegated to Channel 223, far from its present home. Second, it would be replaced on its present frequency by competing FM Station WZQQ already operating in and identified with the Hazard, Kentucky broadcast market. Third, these disruptive changes would result in a powerful new Class C3

Station WYGE having access to the Hazard, Kentucky market for the first time and presenting a duplicating religious program format in direct competition with WJMD for listeners and advertisers. These three powerful blows would be sufficient to destroy Station WJMD, already suffering economically in a severely depressed, small radio market.

16. No improvements in existing service to the public would result which would outweigh the disruption in service to be caused by the instant proposal. For example, Station WZQQ has already filed for an increase in its facilities to 6 KW. Similarly, Station WJMD will shortly be eligible to increase to 6KW operation on its present frequency from its existing transmitter location. Therefore, the disruptive changes in these stations proposed by Huff are not necessary for 6KW operation by WZQQ and WJMD.

17. Moreover, the changes to the existing operations of Stations WZQQ and WJMD would not only be disruptive of service to the public, they would also be very expensive. For example, Station WJMD would be required to replace its antenna and make changes in or replace completely, its existing transmitter. In addition, it will incur expenses in connection with changing its stationery, and for promotional costs to advise the public of the change in its operation. Similar costs will be incurred by the changes in WZQQ's operations necessitated by Huff's proposal. While the Notice and Order indicate that Huff will be liable for these costs under normal circumstances, it does not specifically provide that Huff reimburse WJMD and WZQQ for these expenses.

18. Moreover, Huff as a permittee of a new station must bear the substantial expense of the construction and initial operation of Station WYGE. Thus, Huff must construct and/or reconstruct no less than three new and existing broadcast stations. It has not demonstrated that it has the financial ability to do this. Under the circumstances, at minimum, Huff should be required to establish its financial ability to construct and operate Station WGYE without revenues for three months and to finance the changes in the operations of Stations WJMD and WZQQ required by its proposal. After the required costs for the proposed changes in Stations WJMD and WZQQ have been ascertained, Huff should be required to place in escrow, in favor of these two stations, sufficient funds to cover these costs.

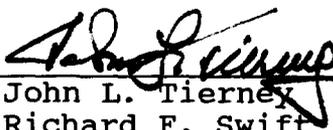
19. In sum, the changes which would be required in the existing operations of Stations WJMD and WZQQ would be disruptive of broadcast service to the public in the Hazard, Kentucky area. In the case of WJMD, the changes would have such deleterious effects as to cause the removal of this station from the air due to economic failure. The resultant loss of service to the public would not be outweighed by the private gain to Huff permitting an upgrade of Station WYGE, London, Kentucky.

20. The Commission cannot assume a laissez faire position towards the economic consequences which would be caused to WJMD's operations as a result of Huff's proposal here. The demise of WJMD caused by this proposal would adversely impact the existing allocations of broadcast frequencies in Hazard, Kentucky under

Section 307(b) of the Communications Act of 1934, as amended. The threatened loss of an existing broadcast transmission facility at Hazard, Kentucky through the demise of Station WJMD far outweighs any upgrade of service to Station WGYE which would result from this proposal. No need has been shown for any additional reception service which would result from an upgrade of Station WGYE. On the contrary, if the status quo is maintained, London, Kentucky would continue to have its Class A FM station, WYGE, Station WJMD would continue to provide a needed transmission facility at Hazard, Kentucky and there would be no disruption of transmission service provided by Station WZQQ to Hyden, Kentucky. For these reasons, the licenses of Stations WJMD and WZQQ should not be modified to change channels as proposed. The disruption and loss of service to the public which would result would be contrary to the public interest. On balance, the public interest would best be served by maintaining the status quo and therefore the changes proposed in the Notice of Proposed Rule Making and The Order To Show Cause should not be made.

Respectfully submitted,

HAZARD BROADCASTING SERVICES, INC..

By 
John L. Tierney
Richard F. Swift
Its Attorneys

TIERNEY & SWIFT
1200 18TH Street N.W.
Suite 210
Washington, D.C.
April 6, 1992



COMMONWEALTH OF KENTUCKY
STATE SENATE

July 1, 1991

Gene Huff
1623 Senator Lane
London, Kentucky 40741-2621
(606) 864-4995

Mr. Mike Barnett
P. O. Box 7001
Hazard KY 41701

Dear Mike:

Please find enclosed my latest response from the engineer we used from Bowling Green, Kentucky. As you will note, an arrangement could be worked out so that the London station would be able to upgrade to C2 level which is 50,000 watts. In this type upgrade, it would give you an automatic opportunity to upgrade to 6,000 watts with no interference at all from the proposed station at Harold. I don't know what our final decision will be in this matter, but you can consider it and express your feelings to me in regard to it.

You mentioned some obstacle perhaps with WSGS and that may be a factor in your final decision, but at least it will give you a basis for thought. Please communicate with me after you have reviewed the material.

Yours truly,

A handwritten signature in black ink, appearing to read "Gene Huff".

Gene Huff
State Senator

GH/am
Enclosure

CHARLES M. ANDERSON

BROADCAST CONSULTANT

1519 EUCLID AVENUE

BOWLING GREEN, KENTUCKY 42103

(502) 781-2067

June 21, 1991

Senator Gene Huff
1623 Senator Lane
London, KY 40741-2621

Dear Senator Huff:

I have reviewed the material on the Hyden and London sites. The site proposed for WZQQ, Hyden appears to be an excellent choice. I ran a terrain study to make sure it would provide the required city-grade signal back over Hyden. It will with about 2 miles to spare.

The site you have suggested for WYGE as a class C3 is not far enough west of the proposed Hyden site to clear. When we substitute channel 223A for 222A at Hyden and upgrade WYGE to 222C3 a separation of 89 km (55 miles) will be required between the two stations. The site you have proposed (N 37-10-12 W 84-11-14) is 83.95 km (52.18 miles) or about three miles short of the separation required to the WZQQ site. Therefore, a site three miles west of the site you have suggested will be required. In any event, a precise transmitter site for WYGE is not required at this stage or even when the upgrade petition is filed. We will simply specify an arbitrary site and demonstrate that a sizable area exists where a site could be located. You could of course obtain a site now. However, there is no guarantee that we will be able to use it once the proceeding is completed. There is always the possibility that other events including the final location for WZQQ will cause some change in the London C3 site. Furthermore, as we have discussed, upgrade petitions are open to conflicting proposals. It is advisable to file a specific site for WZQQ because we are proposing to move an existing station.

The good news is that the WYGE upgrade will work based on the proposed WZQQ site. Therefore, your next step in pursuing the C3 upgrade is to secure an agreement with the Hyden station for the change of their channel and move of their transmitter site to the location they have suggested. You should utilize an attorney in the preparation of that agreement and the actual filing of the petition for rulemaking requesting the upgrade. Once you have obtained the agreement, I will prepare the necessary technical showing

to accompany the petition. You should also discuss timing of your construction permit and the upgrade with a communications attorney to determine whether it is realistic to postpone construction of WYGE pending the outcome of an upgrade petition.

The site you have suggested for the C2 will just barely clear all existing facilities and simultaneously clear the substitution of 223A at WJMD, Hazard. I did not check the city grade coverage for the C2 over London based on our telephone conversation in which you seemed to be inclined to proceed with the C3. I cannot predict the STL situation without an extensive terrain analysis. It is possible to cover 18-20 miles in a single hop with large enough STL antennas and a tall tower. The long path might require a taller tower at your studio site or in the worst case a two hop STL.

With regard to Hazard, the substitution of 223A at the existing WMJD site would result in a 6 kw facility for them. Therefore, it might be in their best interest to pursue this avenue. On the other hand, you would be obligated to reimburse two stations for frequency changes compared to whatever arrangement you can make with Hyden for their site move in the 222C3 option. In the 222C2 scheme, no site move would be required for Hyden, and agreements with the two stations would not be required because no site move would be involved.

The choice seems to reduce to your coverage objectives. The C3 facility is adequate and perhaps preferable for coverage of London-Corbin and the area to the east. The primary benefit of the C2 would be coverage to the west and north.

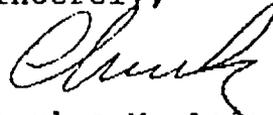
In summary, the upgrade procedure for WYGE involves the following sequential steps:

1. Obtain an appropriate agreement with WZQQ.
2. Prepare a technical showing to accompany the petition for rulemaking (I will prepare this showing).
3. Prepare and file the petition for rulemaking (Communications attorney).
4. After a period of time (3-6 months or longer), the Commission will put the petition on public notice inviting comments including any conflicting proposals.
5. Assuming no conflicts occur, the Commission will in time (3-6 months or longer) grant the upgrade and permit your to file an application in the form of a

minor change. We would need a specific site at this point.

6. The Commission would then grant a new or modified construction permit 3-6 months after filing.
7. You could then build the higher power facility.

Sincerely,



Charles M. Anderson

DECLARATION

I, Michael R. Barnett, hereby declare under penalty of perjury that I have read the foregoing Comments of Hazard Broadcasting Services, Inc., and the statements contained therein, except those of which official notice may be taken, are true and correct.

Date: 4/6/92

A handwritten signature in black ink, appearing to read "Michael R. Barnett", written over a horizontal line.

Michael R. Barnett

President of

Hazard Broadcasting Services, Inc.

CERTIFICATE OF SERVICE

I, Thelma Cromwell-Moss, secretary in the law firm of Tierney & Swift, do hereby certify that on the 3rd day of April, 1992, I sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "**COMMENTS OF HAZARD BROADCASTING SERVICES, INC.**" to the following:

Joey L. Dick
P.O. Box 181
Stinnett, Kentucky 40868

William P. Bernton, Esq.
2 Mill Lane
Yarmouth Port, Massachusetts 02675



Thelma Cromwell-Moss