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JUL 12 11 01 AM '91
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July 11, 1991

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JUL 11 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Objection to Application of
Rosamond Radio, Inc. for a New
FM Station on Channel 228A
at Rosamond, California
(FCC File No. BPH-910225MG)

Dear Ms. Searcy:

Transmitted herewith on behalf of Diane K. Hitt is an original and four copies of an Objection to the application of Rosamond Radio, Inc. for a new FM station on Channel 228A at Rosamond, California (FCC File No. BPH-910225MG). This Objection is respectfully directed to the Chief, Audio Services Division.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


John F. Garziglia

Enclosure

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FM EXAMINERS

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JUL 11 1991

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
)
Rosamond Radio, Inc.)
)
For Construction Permit for)
a New FM Station on Channel)
228A at Rosamond, California)

FCC File No. BPH-910225MG

JUL 12 11 01 AM '91
AUDIO SERVICES
DIVISION

To: Chief, Audio Services Division

OBJECTION

Diane K. Hitt, by her attorneys, pursuant to Section 73.3587 of the Commission's Rules, hereby submits her objection to the acceptance for filing and continued processing of the application of Rosamond Radio, Inc. for a new FM station at Rosamond, California (FCC File No. BPH-910225MG). In support thereof, the following is submitted:

1. The Rosamond Radio, Inc. choice of its proposed antenna site for its new station is made pursuant to Section 73.215 of the Commission's Rules. As shown in the attached channel study, however, the application of Rosamond Radio, Inc. at its proposed antenna site is short-spaced under the provisions of Section 73.207(b) to the licensed facilities of KRZE-FM, Ontario, California by 14.31 kilometers.^{1/} This short-spacing of 14.31 kilometers is well in excess of the eight

^{1/} Pursuant to Section 73.207(b), a distance of 115 kilometers is required. The actual separation between the proposed transmitter site of Rosamond Radio, Inc. and the licensed facility of KRZE-FM is 100.69 kilometers.

kilometer temporary restriction described in "Note to Paragraph (e)" contained in Section 73.215(e) of the Commission's Rules. Accordingly, the application of Rosamond Radio, Inc. is in violation of the Commission's Rules. Further, since no waiver was requested, the application of Rosamond Radio, Inc. is unacceptable for filing in this proceeding and should be dismissed.

2. Section 73.215 of the Commission's Rules describing contour protection for short-spaced assignments is clear that the spacing tables in Section 73.207(b) must be used. While Rosamond Radio, Inc. could have taken advantage of the provisions of Section 73.213(c)(1) in filing its application,^{2/} Section 73.213(c)(1) is inapplicable if Section 73.215 is used. Under Section 73.215, the spacing table in Section 73.207(b) must be used if contour protection in the selection of a transmitter site is sought. Using contour protection, the Note to Paragraph (e) specifies that:

Until further Notice, the Commission will not accept applications that specify short-spaced antenna locations pursuant to this section wherein the proposed distance separation is less than the normally required distance separation in § 73.207 by more than eight kilometers (five miles).

As shown in the attached channel study, the antenna location chosen by Rosamond Radio, Inc. is short spaced to KRZE-FM by well in excess of eight kilometers.

^{2/} The remaining three mutually exclusive applications did so.

3. Rosamond Radio, Inc. may argue that the Second Report and Order, MM Docket No. 88-375, 4 FCC Rcd. 6375, 6382 (1989), at paragraph 57, exempts its application from the temporary eight kilometer limit on short-spaced stations under Section 73.215. That argument is unavailing. The Commission's discussion on paragraph 57 of the Second Report and Order applies only to existing stations seeking to increase their power pursuant to the new rules adopted in the Second Report and Order, and speaks exclusively to increasing power, not to new station applications. At paragraph 57, the Commission states (Second Report and Order):

Because some Class A stations not meeting the new distance separation requirements may nevertheless be able to increase power by utilizing the contour protection provisions of § 73.215 of our rules, we are exempting such stations from the temporary five mile (eight kilometer) limit on short-spaced locations under this rule (emphasis added).

The Commission's reconsideration and clarification of the Second Report and Order (Memorandum Opinion and Order, FCC 91-128, released May 30, 1991), likewise does not offer any assistance to Rosamond Radio, Inc. in an argument that it was somehow exempt from the eight kilometer limit on short-spaced applications. At paragraph 22 of the Memorandum Opinion and Order, the Commission emphasizes its desire that "as many Class A FM stations . . . be upgraded as possible . . . (emphasis added)". Rosamond Radio, Inc. does not presently have a station and it is not attempting to upgrade a station. Rather,

Rosamond Radio, Inc. has filed an application for a new FM facility that is not covered by either the Second Report and Order or the subsequent reconsideration and clarification of the Second Report and Order.

4. The Commission has noted time and time again that in the interest of fairness to competing applicants and other affected parties, and in order to expedite service to the public, the Commission's "hard look" processing standards adopted in the Report and Order in MM Docket No. 84-750, 50 Fed. Reg. 19936 (1985) specifies that applications must be acceptable for filing at the close of the amendment as a matter of right period. See Memorandum Opinion and Order, FCC 91-128 at paragraph 48, released May 30, 1991. Public notice of tenderability of the Rosamond applications was given by Public Notice Report No. 14974, released April 16, 1991. The final date for an amendment to the Rosamond Radio, Inc. application was May 17, 1991. See e.g. FM Application Processing, 59 RR2d 100, 102 (1985). While Rosamond Radio, Inc. did submit an amendment on May 16, 1991, it failed to address its violation of Section 73.215(e). Further, Rosamond Radio, Inc. has not made a timely request for a waiver of Section 73.215(e). Accordingly, the application of Rosamond Radio, Inc., is unacceptable for filing and should be dismissed.^{3/}

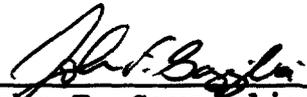
^{3/} Since the application has already been accepted for filing, it should be dismissed as inadvertently accepted for filing.

WHEREFORE, for the reasons above, the application of Rosamond Radio, Inc. (FCC File No. BPH-910225MG) should be dismissed as it is in violation of Section 73.215(e) of the Commission's Rules.

Respectfully submitted,

DIANE K. HITT

By: _____


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Her Attorney

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July 11, 1991

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Application of Rosamond Radio, Inc.

REFERENCE
 34 52 44 N
 118 16 07 W

CLASS A
 Current rules spacings
 CHANNEL 228 - 93.5 MHz

DISPLAY DATES
 DATA 05-29-91
 SEARCH 07-11-91

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AP228	228A	Rosamond	CA	0.0	0.00	115.0	-115.00 *
AP228	228A	Rosamond	CA	315.7	6.33	115.0	-108.67 *
AP228	228A	Rosamond	CA	15.9	6.95	115.0	-108.05 *
ALOPEN	228A	Rosamond	CA	21.4	8.34	115.0	-106.66 *
AP228	228A	Rosamond	CA	35.3	14.62	115.0	-100.38 *
KRZEFM	228A	Ontario	CA	140.7	100.69	115.0	-14.31 *
KFOX	228A	Redondo Beach	CA	184.4	119.53	115.0	4.53
KODJ	226B	Los Angeles	CA	165.9	73.95	69.0	4.95
KZLAFM	230B	Los Angeles	CA	165.9	73.95	69.0	4.95
KZLAFM	230B	Los Angeles	CA	165.9	73.95	69.0	4.95
KERNFM	231B	Bakersfield	CA	325.4	75.51	69.0	6.51
KZLAFM	230B	Los Angeles	CA	175.2	79.59	69.0	10.59
KZLAFM	230B	Los Angeles	CA	175.2	79.60	69.0	10.60
KDB	229B	Santa Barbara	CA	250.5	136.96	113.0	23.96
ALOPEN	228A	Earlimart	CA	320.8	144.02	115.0	29.02
AP228	228A	Earlimart	CA	323.3	149.29	115.0	34.29

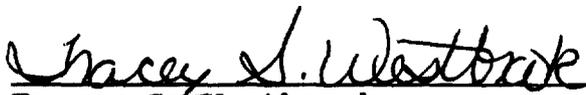
CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, do hereby certify that true copies of the foregoing "Objection" were sent this 11th day of July, 1991, by first-class United States mail, postage prepaid, to the following:

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(For Jerry Evans and Leslie Evans)


Tracey S. Westbrook
Tracey S. Westbrook

* BY HAND