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OCT 16 1992

Federal Communications Commission  
Office of the Secretary

October 16, 1992

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

Re: Docket 92-155  
RM 8096  
Reply Comments

Dear Ms. Searcy:

On behalf of Ames Broadcasting Company, licensee of Station KCCQ, Ames, Iowa, we hereby submit an original and four (4) copies of its Reply Comments in the above-referenced proceeding. Kindly refer this to the Chief, Allocations Branch.

Please direct any questions or correspondence concerning this matter to our offices.

Sincerely,

*Louise Cybulski*  
Gregg P. Skall  
Louise Cybulski  
Counsel for  
Ames Broadcasting Company

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OCT 16 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 92-155  
Table of Allotments, ) RM No. 8096  
FM Broadcast Stations )  
(Blair, Nebraska; )  
Storm Lake, Perry, and )  
Sac City, Iowa) )

TO: Chief, Allocations Branch

REPLY COMMENTS

Ames Broadcasting Company ("Ames"), licensee of Station KCCQ(FM) (Channel 296A), Ames, Iowa, by its counsel and pursuant to Section 1.420(b) of the Commission's Rules, hereby submits its Reply Comments in the above-captioned rule making, which was originally presented as a Counterproposal in MM Docket No. 92-155 (RM-8020). In its Counterproposal, Ames proposed, among other changes, the substitution of Channel 286C3 for Channel 296A at Ames, Iowa, the modification of KCCQ(FM)'s license to specify operation on Channel 286C3, and the allocation of Channel 296C3 at Lake City, Iowa, as that community's first local FM service.

By Public Notice Report No. 1909 (released October 1, 1992), the Commission requested the submission of Reply Comments to Ames' Counterproposal by October 16, 1992. The Commission also announced that competing expressions of interest in the use of Channel 286C3 at Ames, Iowa should be filed by that date. Ames specifically replies herein to the Commission's acceptance of competing expressions of interest in Channel 286C3, which Ames has proposed to utilize for an upgrade of KCCQ(FM).

## I. INTRODUCTION

1. The Commission's acceptance of competing expressions of interest in this instance is inappropriate because Ames' proposal to substitute Channel 286C3 for Channel 296A should be treated as an "incompatible channel swap" pursuant to Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, 60 RR2d 114 (1986). The Commission stated that it anticipated an incompatible channel swap would be triggered by two communities swapping Class A allotments in order for at least one of the communities to receive an existing or adjacent channel upgrade. Without the initial channel swap, the contemplated upgrade would be to a nonadjacent channel. Id. at 120 (¶ 24). The Commission's treatment of such a scenario as an incompatible channel swap precludes the acceptance of competing expressions of interest in the upgraded allotment, thereby assuring the petitioner, usually a permittee or licensee, of obtaining the upgrade without placing its permit or license in jeopardy.

2. Although Ames' proposal is not the same precise factual situation used as an example by the Commission, the result is the same. The Commission said it did not intend to limit such situations by the example it used, and that it would analyze each situation on a case-by-case basis to determine whether the rationale for Section 1.40(g)(3) of the Commission's Rules applies. Id. at ¶ 24. Specifically, in this proceeding, an exchange of channels must occur in order for Ames to obtain an upgrade on Channel 286C3, which ultimately results in a new allotment to a

community currently without its own local FM service. Taken in combination with the other proposals submitted in this docket, the Commission is presented with the most efficient method of allowing two (and possibly three) operating stations to upgrade their facilities from Class A stations to Class C3 stations, and allotting a new channel to each of three other communities. Two of these three new allotments, one Class C3 station and one Class A station, each would be the first local FM service in the community to which it would be allotted. The third new allotment, a Class C3 station, would be to a community with only one other local transmission service.

## II. SUMMARY OF PROPOSALS, COMMENTS AND COUNTERPROPOSALS

3. Sunrise Broadcasting of Nebraska, Inc. ("Sunrise") is the petitioner in this proceeding, proposing to upgrade Station KBWH(FM), Blair, Nebraska, from Channel 292A to Channel 268C3, and to modify the license of KBWH(FM) to specify Channel 268C3. To accommodate the upgrade, Sunrise also requests the modification of Station KAYL-FM, Storm Lake, Iowa, from Channel 268C1 to Channel 269C1; the modification of Station KDLS-FM, Perry, Iowa, from Channel 269A to Channel 286A; and the substitution of Channel 265A for unoccupied and unapplied for Channel 286A at Sac City, Iowa. Finally, Sunrise requests a new allotment of Channel 247C3 at Blair. The Notice of Proposed Rule Making ("Notice"), 7 FCC Rcd 4590 (1992), encompasses each of Sunrise's proposals, except the Notice proposes that Channel 248A (and not Channel

265A) be substituted at Sac City to avoid a short-spacing to a pending application on Channel 264C3 at Eagle Grove, Iowa.

4. Blair Communications ("Blair") filed Comments to the Notice indicating its intent to file an application for Channel 247C3 at Blair, Nebraska, if allotted. Perry Broadcasting Company ("Perry"), licensee of Station KDLS-FM, Perry, Iowa, also filed Comments stating that it accepts Sunrise's proposed modification of the license of KDLS-FM, contingent on Sunrise's reimbursement of Perry's reasonable costs in changing KDLS-FM's frequency.<sup>1/</sup> As shown in Table I below, Sunrise's proposal is comprised of one channel substitution affecting an existing station (KAYL-FM at Storm Lake, Iowa) and one substitution of a vacant channel at Sac City, Iowa.<sup>2/</sup>

5. Ames' Counterproposal to the Notice supports Sunrise's original proposal in all respects, with one minor exception: Ames proposes the modification of the license of KDLS-FM from Channel 269A to Channel 288A, rather than to Channel 286A as proposed by Sunrise. Perry has filed Reply Comments accepting

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<sup>1/</sup> Ames submits that, in light of Perry's acceptance of the proposed reallocation of KDLS-FM, that facet of Sunrise's proposal should not count toward the total number of proposed "other substitutions of channels occupied by existing FM... stations." See Report and Order (Columbus, Nebraska), 59 RR2d 1184, 1185 (¶ 5) (1986).

<sup>2/</sup> The tally of Sunrise's proposed amendments to the Table of Allotments does not include its proposal for its own upgrade for KBWH(FM) at Blair, Nebraska, or the substitution affecting KDLS-FM at Perry, Iowa, for the reason stated in n.1, supra.

Ames' counterproposal, again contingent upon reimbursement of the reasonable costs involved.

6. In addition to agreeing with Sunrise's overall proposal, Ames also proposes to modify its license for KCCQ(FM) at Ames, Iowa, by substituting Channel 286C3 for Channel 296A. In order to obtain this upgrade, the Commission must approve of Sunrise's overall proposal, as well as Ames' proposal to modify the license of KDSN-FM at Denison, Iowa, to substitute Channel 256A for Channel 296A. If both KCCQ(FM) and KDSN-FM are permitted to give up their respective Channel 296A allotments, the result will be the ability to allot Channel 296C3 to Lake City, Iowa, a community which currently does not have a channel allotted to it. As shown in Table I below, Ames' counterproposal is comprised of only one additional channel substitution affecting an existing station (KDSN-FM at Denison, Iowa).<sup>3/</sup>

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<sup>3/</sup> The tally of Ames' proposed amendments to the Table of Allotments does not include its proposal for its own upgrade for KCCQ(FM) at Ames, Iowa; the substitution affecting KDLS-FM at Perry, Iowa, for the reason stated in n.1, supra; or the substitution affecting KAYL-FM at Storm Lake, Iowa, because that substitution is already proposed by Sunrise. Even if the substitution affecting KAYL-FM is counted towards Ames' total number of proposed changes involving existing stations, that total is two stations. However, it is Ames' understanding that the staff applies the limits in Columbus, Nebraska on each individual proposal, not on the entire proceeding, since in Columbus, Nebraska the Commission addressed "potential petitioners for rule making" in stating that the staff should not "entertain proposals for changes in the FM Table of Allotments which involve more than two other substitutions of channels occupied by existing FM or TV stations." Columbus, Nebraska, 59 RR2d at 1185 (¶¶ 4-5).

City	Station	Present Channel	Sunrise/ NPRM Proposal	Ames Counter- Proposal	Mahn <sup>4</sup> proposal
Blair, NE	KBWH(FM)	292A	268C3		
Blair, NE		----	247C3		
Ames, IA	KCCQ(FM)	296A		286C3	
Perry, IA	KDLS-FM	269A	286A	288A	
Sac City, IA	(unoccp)	286A	248A	248A	265A or 284A
StormLake, IA	KAYL-FM	268C1	269C1	269C1	
Denison, IA	KDSN-FM	296A		256A <sup>5</sup> (256C3)	
LakeCity, IA		----		296C3	
Alta, IA		----			248A

TABLE 1

7. The collective proposals reflected in Table 1, above, would affect only two other existing stations (KAYL-FM at Storm Lake and KDSN-FM at Denison, Iowa) and one vacant allocation at Sac City. The collective proposals result in three new allotments, two of which are for communities which do not currently

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4/ A counterproposal was filed by Mahn Partnership proposing that vacant Channel 286A at Sac City, Iowa, be reallocated as Channel 265A or 284A, rather than as Channel 248A as proposed in the Notice. This would allow for a new allotment of Channel 248A to Alta, Iowa, an incorporated community currently without any local aural transmission service allotted to it. Mahn states that Channel 248A is the only channel which can be allotted to Alta, and the allotment is contingent upon the implementation of its proposed substitution of the vacant channel at Sac City.

5/ Sunrise demonstrates in its Engineering Statement (at p.2 and Table VIII-B) how KDSN(FM) at Denison, Iowa could be upgraded to a Channel C3, if the licensee chooses to do so following the substitution to Channel 256A.

have a local transmission service (Channel 296C3 in Lake City, Iowa, and Channel 248A in Alta, Iowa), and one of which will provide a second FM service to its community (Channel 247C3 at Blair, Nebraska).

8. This total exchange of channels proposed by Sunrise and Ames is the only manner through which Lake City can obtain its first local regional transmission service. See Ames' Counterproposal at Exhibit 1, Engineering Statement. Ames has also demonstrated that each of the reallocations proposed in its Counterproposal could be made in full compliance with the Commission's separation requirements. See Ames' Counterproposal at p.6 and Exhibit 1. Thus, as Ames has proposed, all of the reallocations can be accommodated if the Commission adopts the proposals as part of a single plan. In its Reply Comments filed September 30, 1992, Sunrise sets forth how all of the petitioners can cohesively achieve the desired upgrades and new allocations through the "global solution" derived from the Notice, comments and counterproposals. See Sunrise Engineering Statement at p.2.

### **III. AMES' COUNTERPROPOSAL SHOULD BE TREATED AS AN INCOMPATIBLE CHANNEL SWAP**

9. Ames' Counterproposal does not exactly mirror the factual situation described by the Commission in Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, supra, 60 RR2d at 120 (¶ 24): i.e., there is not a direct swap between two communities of Class A allotments to provide for a subsequent existing or adjacent channel upgrade at one of the communities. However, Ames' proposal does involve a swap among

three communities. Ames' upgrade proposal is contingent on the deletion of Channel 286A at Sac City.<sup>6/</sup> If Channel 286A is not allotted to Perry (but rather if Channel 288A is allotted to Perry, as Ames suggests), Channel 286A can effectively be "swapped" from Sac City to Ames, which in turn would allow for Ames' subsequent existing channel upgrade to Channel 286C3 without the Commission's acceptance of competing expressions of interest. It is well established that existing and adjacent channel upgrades are protected from competing expressions of interest. See Section 1.420(g)(3) of the Commission's Rules, and Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, 60 RR2d 114 (1986).

10. Rather than Ames' Channel 296A being swapped "back" to Sac City in exchange for Sac City's Channel 286A, Ames' proposal would serve the greater public interest in that it calls for Channel 296A to be "swapped" to Lake City, in the form of an allotment for the first local service for that community. But for the multi-community exchange proposed by the Sunrise and Ames proposals, Lake City could not have its first regional transmission service. Accordingly, Ames' counterproposal should be afforded the same protection as afforded to any incompatible channel swap against competing expressions of interest. The only

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<sup>6/</sup> It does not matter, for purposes of Ames' proposal, whether Channel 248A (as proposed by in the Notice) or Channel 265A or Channel 285A (as proposed by Mahn) is substituted for Channel 286A at Sac City. Further, Ames asserts that the substitution of 286C3 is the most efficient manner, thereby affecting the least number of existing stations.

variation from the Commission's "model" incompatible channel swap scenario is that Ames' objectives are met through the multi-community exchange in large part proposed by Sunrise, rather than through a direct swap between two communities.

11. The Commission has addressed a very similar multi-community exchange of allotments and treated the proposal seeking the upgrade as an incompatible channel swap. In its Report and Order (Angola, Indiana), 6 FCC Rcd 1230 (1991), the Commission was presented with several proposals and counterproposals potentially affecting the allotments in a number of communities. In relevant part, the proposals are reflected as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Decatur, Indiana	224A	286B1
Berne, Indiana	230A	224A
Roanoke, Indiana	286A	231A

Angola, Indiana, 6 FCC Rcd at 1232 (¶ 15).

12. The licensee of WQTZ(FM), Decatur, Indiana, had proposed to upgrade its facility on a seemingly nonadjacent channel, as did Ames in its Counterproposal. In light of the other proposals set forth in the rule making, the Commission decided that "[a]lthough Midwest requested a 'nonadjacent channel upgrade,' it is being treated under the provisions of Section 1.420(g)(3) of the Commission's Rules because the proposal constitutes an 'incompatible channel swap.'" Angola, Indiana, 6 FCC Rcd at n.18, citing Modification of FM Broadcast Licenses to Higher Class Co-Channels of Adjacent Channels, 60 RR2d 114, 120 (1986).

13. Ames' proposal, likewise, should be treated as an incompatible channel swap, and the Commission should not accept competing expressions of interest in the use of Channel 286C3 at Ames, Iowa, despite the announcement in Public Notice Report No. 1909 (released October 1, 1992).<sup>1/</sup>

**CONCLUSION**

For the reasons stated herein, the Commission should adopt the collective proposals submitted in this proceeding, as reflected in Table 1 herein, without accepting competing expressions of interest in Channel 286C3 at Ames, Iowa, and amend the FM Table of Allotments accordingly.

Respectfully submitted,

**AMES BROADCASTING COMPANY**

By: *Louise Cybulski*  
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October 16, 1992

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<sup>1/</sup> In the event that the Commission does not treat Ames' proposed upgrade to Channel 286C3 as an incompatible channel swap, and thereby accepts competing expressions of interest for that channel, Ames reasserts its interest in the allocation of 296C3 to Lake City as that community's first regional service. To accommodate the allocation of Channel 296C3 at Lake City, Ames would be willing to operate KCCQ(FM) on Channel 286A at Ames, Iowa.

**CERTIFICATE OF SERVICE**

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing "Reply Comments" was served on this 16th day of October, 1992, by U.S. mail, first-class, postage prepaid on the following individuals:

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