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November 27, 1992

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

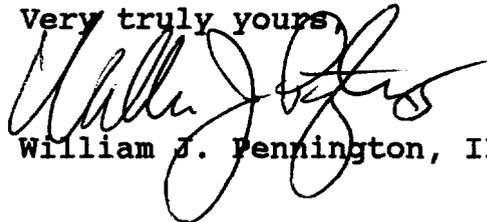
RE: MM Docket No. 92-176

Dear Ms. Searcy:

Transmitted herewith, on behalf Mountain Home Broadcasting Corporation, A&J Broadcasting Co. and Twin Cities Broadcasting, Inc. are an original and four (4) copies of "MOTION FOR ACCEPTANCE OF LATE-FILED EMERGENCY PLEADING TO CLARIFY THE JOINT COMMENTS AND COUNTERPROPOSAL OF MOUNTAIN HOME BROADCASTING CORPORATION, A&J BROADCASTING COMPANY AND TWIN CITIES BROADCASTING, INC." in the above-captioned proceeding.

Should there be any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,



William J. Pennington, III

Enc.  
WJP/tlt  
cc: As per Certificate of Service

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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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

MM Docket No. 92-176

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**MOTION FOR ACCEPTANCE OF LATE-FILED EMERGENCY  
PLEADING TO CLARIFY THE JOINT COMMENTS AND COUNTERPROPOSAL  
OF MOUNTAIN HOME BROADCASTING CORPORATION, A&J BROADCASTING  
COMPANY AND TWIN CITIES BROADCASTING, INC.**

Mountain Home Broadcasting Corporation, ("MHBC"), licensee of Station KTLO-FM, Mountain Home, Arkansas, A&J Broadcasting Co. ("A&J"), licensee of Station KCTT-FM, Yellville, Arkansas, and Twin Cities Broadcasting, Inc. ("Twin Cities"), licensee of Station KOZX(FM), Cabool, Missouri, (as a group, "Joint Commenters"), by their counsel, pursuant to Section 1.46(b) and 1.415(d) and of the Commission's Rules, hereby moves to provide clarification of their jointly filed "Comments and Counterproposal" in the above-captioned rule making proceeding so to dispel any confusion or misunderstandings brought forth in the Reply Comments submitted by Demaree Media, Inc. ("Demaree"). In light of the "emergency situation" described herein, the

Joint Commenters respectfully requests that this late-filed pleading be accepted and considered by the Commission in reaching a final resolution of this proceeding. In support of this Motion, the Joint Commenters shows the following:

**BACKGROUND**

Demaree filed with the Commission a Petition for Rule Making in this proceeding requesting the substitution of Channel 252C2 for Channel 252C3 at Bentonville, Arkansas and the modification of license for Station KOLZ(FM) to specify operation on the upgraded channel. In order to accommodate this channel substitution at Bentonville, it further requested the substitution of Channel 232A for Channel 252A at Mountain Home, Arkansas and the modification of Station KTLO-FM's license to specify operation on Channel 232A.

During the period for submitting comments in this proceeding, the Joint Commenters filed with the Commission a counterproposal which did not hinder Demaree's ability to upgrade on Channel 252C2. The Joint Commenters proposed the substitution of Channel 250C2 for Channel 252A at Mountain Home and the modification of KTLO-FM's license accordingly. To accomplish this upgrade, the Joint Commenters proposed the substitution of Channel 269A for Channel 249C2 at Yellville, Arkansas and the modification of KCTT-FM's license accordingly. The Joint Commenters showed in their Comments and Counterproposal that Channel 250C2 could be allotted to Mountain Home with a site restriction of 22.0 kilometers south southeast of the community. In addition,

it was shown that Channel 269A could be allotted to Yellville at the present KCTT-FM antenna site coordinates.

The Joint Commenters also showed that if the Commission denied the Petition for Reconsideration filed by Lake Broadcasting, Inc. ("Lake") in MM Docket No 89-120 that Channel 250C2 could be allotted to Mountain Home at coordinates near the present licensed KTLO-FM antenna site if Channel 271A were substituted for Channel 251A at Cabool, Missouri and the license of Station KOZX(FM) were modified accordingly.

The Joint Commenters filed, as part of its Comments and Counterproposal, written agreements between the parties outlining approval and arrangements made surrounding the proposed changes.

Demaree, in its Reply Comments, stated that the Joint Commenters Counterproposal should be stricken as it is "contingent" upon a favorable outcome in MM Docket No 89-120 and thus is not procedurally acceptable under the standards set forth in Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3910 (1990).

**THE DEMAREE REPLY COMMENTS HAVE CREATED AN "EMERGENCY SITUATION" WHICH WARRANTS ACCEPTANCE OF THIS PLEADING TO CLARIFY THE JOINT COMMENTER'S COUNTERPROPOSAL**

The Joint Commenters Counterproposal is not contingent upon the outcome of Lake's Petition for Reconsideration filed in MM Docket 89-120. It was plainly shown and stated

in the Counterproposal that Channel 250C2 could be allotted to Mountain Home at a point 22.0 kilometers south southeast of the community and that MHBC would be willing to accept the allotment at that site. At these allotment coordinates the only other changes in the Table of Allotments which would have to be made is the substitution of Channel 269A for Channel 249C2 at Yellville. These channel substitutions have no bearing on MM Docket No. 89-120 in any manner.

It was stated in the counterproposal that should Lake's Petition for Reconsideration in MM Docket 89-120 be denied, before a Report and Order is issued in the instant proceeding, that MHBC requests that the allotment coordinates be those shown as being near the present KTLO-FM antenna site. It was shown that KTLO-FM could utilize those coordinates closer to Mountain Home, near their present antenna site, if Channel 271A were substituted for Channel 251C2 at Cabool and the license of Station KOZX modified accordingly.

MHBC wanted the Commission to be aware of the opportunity to allot Channel 250C2 at the coordinates near the present KTLO-FM site should Lake's Petition for Reconsideration in MM Docket 89-120 be denied. If Channel 250C2 were allotted to Mountain Home at the coordinates near the present KTLO-FM site, the time it would take to construct the upgraded facility would be greatly lessened. There would be a distinct possibility that MHBC could utilize its present site, although short spaced to the

pending allotment of Channel 250A at Waynesville, Missouri. MHBC could either employ a directional antenna for use at its present site or utilize the criteria set forth in Section 73.215 of the Commission's Rules to provide contour protection to a shortspaced facility. If allowed to upgrade on Channel 250C2 at its present antenna site, MHBC would not be faced with locating and making arrangements to purchase or lease a tract of land on which to locate its new tower, nor would site approval have to be obtained from the Federal Aviation Administration. Perhaps most important from a time factor, MHBC would not be faced with the time consuming exercise of constructing a new tower for the upgraded facility. The public interest would certainly be served by the institution of expanded service for KTLO-FM in a time efficient manner.

MHBC wants to make perfectly clear, and states once again, that it will gladly accept the allotment of Channel 250C2 for use by KTLO-FM, site restricted 22.0 kilometers south southeast of Mountain Home. As requested by the Joint Commenters, and shown in the Comments and Counterproposal, Channel 250C2 may be allotted to Mountain Home at the coordinates 22.0 kilometers south southeast of the community.

The counterproposal set forth by the Joint Commenters allows for not only the upgrade of KTLO-FM at Mountain Home but Demaree's requested upgrade of KOLZ(FM) at Bentonville. In addition, the allotment scheme would give a true

reflection of the intended use of the channel assigned to Yellville. The Commission should adopt this counterproposal, as it allows all affected parties to receive the allotment changes they request while creating the most efficient use of the spectrum.

The Joint Commenters suggest that the real reasons behind Demaree's objections to the counterproposal in this proceeding may not have been made clear. It is quite obvious that the Joint Commenters were only making the Commission aware that Channel 250C2 could possibly be allotted at coordinates near the present KTLO-FM antenna site, and that arrangement would benefit the public interest. It was also shown in an exhibit, and made clear in the pleading, that Channel 250C2 could be allotted to Mountain Home without any potential conflict with MM Docket 89-120, and that MHBC would be more than willing to accept the allotment at that site. Moreover, all of the changes proposed by the Joint Commenters would in no way affect the requested upgrade by Demaree of its Bentonville station. These facts, in conjunction with the knowledge that Demaree owns a number of broadcast stations in the general area of northern Arkansas and southern Missouri, give rise to the possibility that Demaree may have a vested interest in blocking KTLO-FM from a proposed upgrade to Class C2. It seems hard to imagine any other reason why Demaree would suddenly develop a burning desire to deny other upgrades and enhancements, which further the public interest, when its

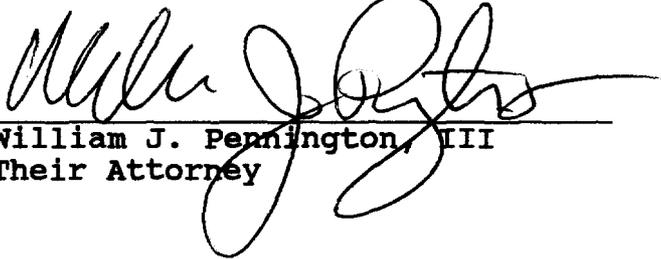
own facility's increase to Class C2 is no longer in jeopardy. The gross inaccuracies and misstatements in Demaree's Reply Comments are no more than an attempt to confuse and cloud a clear reading of the Joint Commenters counterproposal. The Commission should not condone this attempt to rewrite the meaning of the Joint Commenters counterproposal into something which furthers a possible hidden agenda. The Joint Commenters respectfully submit that the misunderstanding and confusion perpetuated in Demaree's Reply Comments has created an "emergency situation" within the meaning of Section 1.46(b) of the Rules, which fully supports acceptance of this clarification of the Joint Commenters Comments and Counterproposal filed earlier in this proceeding.

In conclusion, the Joint Commenters want to make perfectly clear that its counterproposal, put forth in this docket is NOT, and was never meant to be, contingent upon the outcome of any other proceeding before the Commission. MHBC was only making the Commission aware of the possibility that the public interest could be served by the possible allotment of Channel 250C2 at the coordinates near the present KTLO-FM antenna site. MHBC, states once again, that it will accept the allotment of Channel 250C2 at the site restricted point 22.0 kilometers south southeast of Mountain Home.

Respectfully submitted,

MOUNTAIN HOME BROADCASTING CORP.  
A&J BROADCASTING COMPANY  
TWIN CITIES BROADCASTING, INC.

By:

  
\_\_\_\_\_  
William J. Pennington, III  
Their Attorney

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Wilmington, NC 28406  
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November 27, 1992

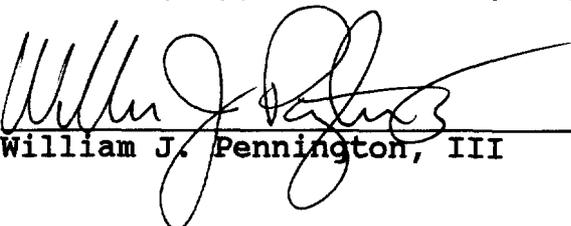
**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of November, 1992, I deposited copies of the foregoing "MOTION FOR ACCEPTANCE OF LATE-FILE EMERGENCY PLEADING TO CLARIFY THE JOINT COMMENTS AND COUNTERPROPOSAL OF MOUNTAIN HOME BROADCASTING CORPORATION, A&J BROADCASTING COMPANY AND TWIN CITIES BROADCASTING, INC." in the United State mail, first class, postage prepaid, addressed to the following:

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW  
Washington, DC 20554

Nancy Joyner  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW  
Washington, DC 20554

Demaree Media, Inc.  
Attn: L. Patrick Demaree  
Post Office Box 878  
Fayetteville, AR 72702  
(Licensee of KOLZ(FM), Bentonville, AR)

  
William J. Pennington, III