

ORIGINAL RECEIVED
FILE NOV 30 1992

ROSENMAN & COLIN

1300 19TH STREET, N.W., WASHINGTON, D.C. 20036
TELEPHONE (202) 463-7177
TELECOPIER (202) 429-0046

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2685
TELEPHONE (212) 940-8800

SAMUEL I. ROSENMAN (1896-1973)
RALPH F. COLIN (1900-1985)

November 30, 1992

SPECIAL COUNSEL
JEROLD L. JACOBS

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

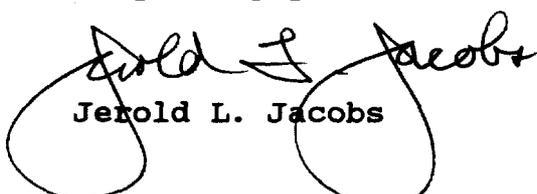
Re: MM Docket No. 92-214
FM Table of Allotments
Columbia and Bourbon, Missouri

Dear Ms. Searcy:

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its "REPLY COMMENTS OF LAKE BROADCASTING, INC." in the above-referenced FM channel rulemaking proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certification of Service (all w/enc.)

No. of Copies rec'd 0+4
List A B C D E

RECEIVED

NOV 30 1992

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 92-214
Table of Allotments,)
FM Broadcast Stations) RM-8062
(Columbia and Bourbon, Missouri)

TO: Chief, Allocations Branch
Mass Media Bureau

REPLY COMMENTS OF LAKE BROADCASTING, INC.

LAKE BROADCASTING, INC. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KXIY(FM), Cuba, Missouri, and an applicant for a new FM broadcast station on Channel 244A at Bourbon, Missouri, by its attorneys, pursuant to §1.415(d) of the Commission's Rules, hereby submits its Reply Comments in response to: the November 3, 1992 "Joint Comments" of Al Greenfield d/b/a The Greenfield Group, Receiver ("Greenfield") and Zimmer Radio of Mid-Missouri, Inc. ("ZRMMI") (together "G/Z"); the November 10, 1992 "Comments and Counterproposal" of Jeff Weinhaus ("Weinhaus"); the November 13, 1992 "Comments and Counterproposal" of Central Missouri Broadcasting, Inc. ("CMB"); and the November 13, 1992 "Comments-Counterproposal" of Tony Knipp ("Knipp") in this proceeding. In support whereof, Lake shows the following:

1. The subject rulemaking proceeding was initiated by Notice of Proposed Rule Making ("NPRM"), 7 FCC Rcd 6230 (MMB 1992), which proposed, on behalf of Greenfield, who is

permittee of Station KCMQ(FM), Columbia, Missouri, to upgrade KCMQ's facilities from Channel 244C3 to Channel 244C1 and either to substitute Channel 297A for Channel 244A at Bourbon, Missouri, or to delete Channel 244A from the Table of Allotments, if there is no application filed for Channel 244A during the comment cycle herein.

2. On November 13, 1992, Lake filed "Comments and Counterproposal" herein, which urged the following key points:

(a) Channel 244A should not be deleted, because Lake has timely filed an application for a new FM station on that frequency at Bourbon (File No. ARN-921112MH), which precludes deletion of Channel 244A from the Table of Allotments "for lack of interest" (NPRM, ¶3);

(b) Greenfield's proposed upgrade to Channel 244C1 is fatally defective on two engineering grounds:

First, Greenfield and the NPRM incorrectly assume that Channel 297A is currently available for allotment at Bourbon, which it is not, since it is directly implicated in a still-pending FM channel rulemaking proceeding in MM Docket No. 89-120 (FM Table of Allotments (Northwye, Cuba, Waynesville, Lake Ozark, and Eldon MO) (the "Cuba" case), 7 FCC Rcd 1449 (MMB 1992)). Since Channel 297A is presently "tied up" in the Cuba proceeding, it is premature for the Commission to consider allotting it to Bourbon, and Greenfield's proposal, which depends upon the availability of Channel 297A, is void as a "contingent" rulemaking proposal. See FM Table of Allotments (Kaukauna and Cleveland WI), 6 FCC Rcd 7142 n.2 (MMB 1991) (counterproposals -- and presumably petitions for rulemaking -- must be technically correct when initially filed and cannot be contingent upon future rulemaking events); FM Table of Allotments (Alturas CA), DA 92-1490 n.2 (MMB Nov. 24, 1992) (proposed additional equivalent channel cannot be shortspaced to pending allotment proposal); and

Second, Greenfield's proposal does not place a principal community contour over any part of the city of Columbia, Missouri in clear violation of §73.315(a) and has significant line-of-sight obstruction in clear violation of §73.315(b). See FM Table of Allotments (Naples

Park et al. FL), 7 FCC Rcd 4134, 4135 ¶5 (MMB 1992) (§73.315(a) violation is fatal to counterproposal);

(c) In lieu of Greenfield's proposed substitution of Channel 297A for Channel 244A at Bourbon, the Commission should upgrade Lake's present Class A allotment at Cuba, Missouri (Station KXIY) to Channel 297C3. Channel 297C3 can be substituted at Lake's Cuba, Missouri transmitter site for Channel 271A (its present allotment) or 297A (the Cuba proposed allotment).

3. As Lake will now demonstrate, out of the four counterproposals under consideration (including Lake's), all are compatible with each other and consistent with the Commission's rules and policies, except for Knipp's. (Although Lake is preliminarily commenting on the counterproposals at this time, it will do so more fully if and when they are placed on Public Notice.)

4. The Lake, CMB, and Weinhaus counterproposals can be summarized as follows:

<u>City</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Columbia MO (No Change)	244C3	244C3
Bourbon MO (No Change)	244A	244A
Cuba MO (LAKE PROPOSAL)	271A (or 297A)	297C3
Dixon MO (CMB PROPOSAL)	-	243A ¹
Leasburg MO (WEINHAUS PROPOSAL)	-	231A ²

¹ CMB's Engineering Statement recites that CMB's Dixon "allocation point has been protected for 244A at Bourbon MO". Therefore, CMB's counterproposal is not incompatible with Lake's proposal to retain the Channel 244A allotment at Bourbon.

² Weinhaus also proposes Channel 297A as an alternative to allotting Channel 231A at Leasburg. This chart includes only Channel 231A, because, as Lake has explained in Paragraph 2(b) above, Channel 297A is not available.

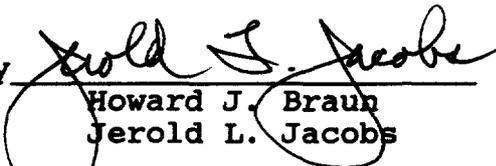
The Knipp counterproposal is incompatible with Lake's counterproposal and is unacceptable in this proceeding because it proposes to use Channel 297 somewhere other than at Cuba (Knipp proposes to allot Channel 297C3 at Gerald, Missouri). Thus, like Greenfield, Knipp has erred by failing to take into account that Channel 297A is currently tied up in the Cuba proceeding. See Paragraph 2(b) above. A second major defect in Knipp's proposal is that he has not provided adequate information to demonstrate that Gerald (1990 U.S. Census pop. 888) is a community for allotment purposes. E.g., FM Table of Allotments (Liberty Hill SC), 6 FCC Rcd 4227 (MMB 1991).

5. In sum, the G/Z rulemaking proposal and the Knipp counterproposal are procedurally and substantively violative of the Commission's FM allotment and engineering rules and policies and should be summarily denied. On the other hand, upgrading Lake's present Class A allotment at Cuba to Channel 297C3 will provide the areas's first local wide-area FM service, and the proposals of CMB and Weinhaus (Channel 231A) are also consistent with the Commission's Rules and compatible with Lake's proposal. Therefore, Lake submits that the paramount public interest would best be served by granting the combined counterproposals of Lake, CMB, and Weinhaus (as

summarized in the chart above) and by denying G/Z's proposal and Knipp's counterproposal.

Respectfully submitted,

LAKE BROADCASTING, INC.

By 
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-7177

Its Attorneys

Dated: November 30, 1992

CERTIFICATE OF SERVICE

I, Yvonne Corbett-Wrice, a secretary in the law offices of Rosenman & Colin, do hereby certify that on this 30th day of November, 1992, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**REPLY COMMENTS OF LAKE BROADCASTING, INC.**" to the following:

Michael C. Ruger, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Ms. Kathleen Scheuerle*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8314
Washington, D.C. 20554

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036-2847
**COUNSEL FOR THE GREENFIELD GROUP AND
ZIMMER RADIO OF MID-MISSOURI, INC.**

Alan C. Campbell, Esq.
Irwin, Campbell & Crowe
1320 - 18th Street, N.W.
Suite 400
Washington, D.C. 20036
COUNSEL FOR MISSOURI BROADCASTING, INC.

Jeff Weinhaus
Route 1, Box 395
Leasburg, Missouri 65535

Tony Knipp
507 Booneville Road
Jefferson City, Missouri 65101



Yvonne Corbett-Wrice

***BY HAND**