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

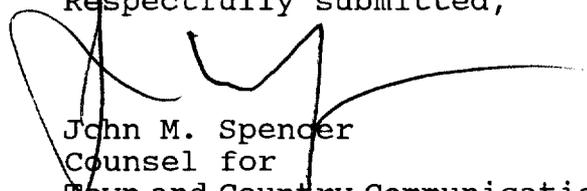
Re: Town and Country Communications, Inc.
KZMO-FM, California, Missouri
FM Table of Allotments, Petition for Reconsideration
Our File No. 79020, Your Ref. No. 1800D5

Dear Ms. Searcy:

On behalf of Town and Country Communications, Inc., licensee of station KZMO-FM, California, Missouri, enclosed please find an original and four copies of a petition for reconsideration of recent staff action returning a petition for rule making to amend the FM Table of Allotments.

If any additional information is desired, please communicate with the undersigned.

Respectfully submitted,



John M. Spender
Counsel for
Town and Country Communications, Inc.

Encl. (5)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)
)
Amendment of Rule 73.202(b)) RM-
Table of Allotments,)
FM Broadcast Stations)
(California, Missouri))

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TO: Chief, Allocations Branch

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PETITION FOR RECONSIDERATION

1. By letter dated November 18, 1992, the Commission returned the above-captioned petition for rule making to upgrade the facilities of station KZMO-FM, California, Missouri, from channel 232A to 232C1. Pursuant to Rule 1.106, Town and Country Communications, Inc. ("T&C"), licensee of KZMO-FM and petitioner herein, by its attorney, hereby requests reconsideration of that action.

2. The stated basis of the Commission's action was that T&C's petition was premature, being contingent upon a pending channel change at Rolla, Missouri, that is not yet final in MM Docket No. 91-181, "particularly when that proceeding is contested, as is MM Docket No. 91-181."

3. Such a result is inappropriate where, as here:

- (a) the parties to the prior proceeding have resolved all their differences and are merely waiting for the Commission to act, and
- (b) return has the effect of precluding consideration of a proposal with other, mutually exclusive proposals.

4. MM Docket No. 91-181. The instant California, Missouri, 232C1 proposal is contingent upon deletion of channel 232A (by the substitution of channel 292A) at Rolla, Missouri, which is licensed to Progressive Broadcasting Company of Missouri ("Progressive"). T&C proposed that very deletion in its petition for rule making to upgrade KZMO-FM from 232A to 232C2, and in response to a Notice of Proposed Rule Making¹ Progressive filed supporting comments.

5. The proceeding became contested when Sobocomo Radio, Inc. ("Sobocomo") filed a counterproposal requesting channel 291C2 at Ashland, Missouri (which conflicted with the proposed substitution at Rolla), and addition of channel 298A at Monroe City, Missouri (which did not conflict with either part of T&C's proposal).

6. Following discussions among the parties involved, on October 16, 1992 joint supplemental comments were filed resolving

¹ 6 FCC Rcd 3727 (1991).

the sole conflict through mutually agreed upon site restrictions.² The effect of the joint settlement proposal is that the earlier, conflicting aspects of the T&C and Sobocomo proposals have been superseded. There is no longer any conflict between the proponents' proposals, and there is no third-party opposition to any of the T&C or Sobocomo proposals.

7. Thus MM Docket No. 91-181 is ripe for favorable action. Indeed, but for processing delays entirely beyond T&C's control, the Rolla substitution could already be final and this petition would not be necessary.

8. The cited policy of not accepting petitions dependent on changes pending in another proceeding may have some validity where the outcome of the other proceeding is uncertain. However, where the only uncertainty is when the Commission will release the inevitable order making the change in question, applying such a policy flies in the face of the public interest.

9. Under these circumstances, therefore, the Commission should reinstate the instant California C1 petition and process it for generation of a notice of proposed rule making.

² In addition, the settlement entails modifying the allotment coordinates for vacant and unapplied for channel 290A at Wheeling, Missouri, a change which also corrects an apparently inadvertent short-spacing between that allotment and channel 290C1 at Lawrence, Kansas.

10. MM Docket No. 92-214. Were finality of the Rolla substitution the only problem, the Commission's return of T&C's C1 proposal would have no adverse impact other than delaying its refiling and eventual consideration. However, the passage of time subjects any unfiled proposal to the risk of being cut-off by other proposals and Commission actions. And in this case, such a risk is not merely academic.

11. MM Docket No. 92-214 commenced with a petition for rule making proposing, in part, allotment of channel 231A or 297A at Bourbon, Missouri. In response to the Notice of Proposed Rule Making,³ one commenter has counterproposed allotting channel 231A or 297A at Leasburg, Missouri. Allotment of channel 231A to either Bourbon or Leasburg, Missouri, is mutually exclusive with T&C's proposal to allot channel 232C1 at California, Missouri.⁴

12. Comments in Docket 92-214 were due November 13, 1992, one week after T&C filed the instant C1 petition. T&C's proposal would be considered a timely counterproposal in Docket 92-214 if accepted as of its December 6, 1992 filing. But if refiled after final action in Docket 91-181, it would be late-filed with respect to Docket 92-214.

³ 7 FCC Rcd 6230 (1992).

⁴ The allotment coordinates specified for both the Bourbon and Leasburg proposals are North latitude 38°5'0", West longitude 91°15'0". That site is 93 kilometers from the allotment site T&C specified, whereas Rule 73.207 requires a separation of 133 kilometers for first-adjacent-channel class A and C1 stations.

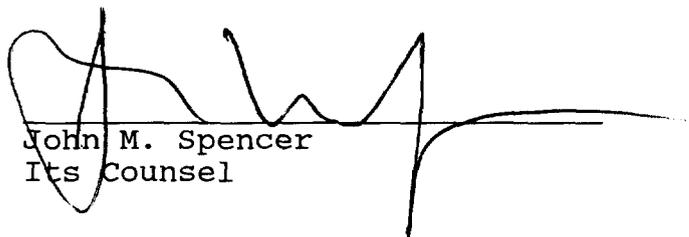
13. Conclusions. These circumstances combine to mandate reconsideration of the Commission's action returning T&C's petition for rule making, and acceptance of the petition nunc pro tunc. There can be no doubt about the inevitable outcome of Docket 91-181, and maintaining the fiction that there may be some doubt falls far short of a substantial reason for precluding consideration of T&C's class C1 proposal.

14. Accordingly, the Commission should grant the relief requested herein and process T&C's petition for generation of a notice of proposed rule making.⁵ To facilitate the Commission's consideration of this matter, T&C's original petition for rule making is included as an attachment hereto.

Respectfully submitted,

TOWN AND COUNTRY COMMUNICATIONS, INC.

By:


John M. Spencer
Its Counsel

Leibowitz & Spencer
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131
(305) 530-1322

December 17, 1992

⁵ Alternatively, the Commission has no choice but to reject the proposals for channel 231A made in Docket 92-214, since they are also presented before final action in Docket 91-181. This is a pale substitute for the relief T&C seeks, however, since it is conceivable channel 231A might become "available" to resolve the competition for channels at Bourbon or Leasburg on the Commission's own motion, without T&C having a chance to present the merits of its otherwise timely proposal.