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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations, )  
(Cadiz and Oak Grove, Kentucky) )

MM Docket No. 93-314

RM-8396

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

MAIL STOP 1800D5

REPLY COMMENTS OF HAM BROADCASTING, INC.

1. Ham Broadcasting, Inc. ("Ham"), licensee of station WKDZ-FM, Cadiz, Kentucky, hereby submits its Reply Comments in the above-captioned proceeding. Ham is the proponent in RM-8396. These Reply Comments respond to the formal comments by Trigg County, Kentucky, and Southern Broadcasting Corporation ("Southern"), licensee of WABD(AM) and WCVQ(FM), Fort Campbell, Kentucky, as well as letters filed by the Trigg County Board of Education; D. Bruce Perkins of the Cadiz City Council; Harold Meredith, President of the Cadiz Chamber of Commerce; and Jim Ricks, Mayor of Cadiz.<sup>1/</sup>

2. The commenters other than Southern are all from Cadiz and are unhappy about the fact that an upgraded WKDZ-FM will serve the needs of people other than the residents of Cadiz, who are today the major focus of WKDZ-FM's programming as a 3 kW Class A station. The basic answer is that if WKDZ-FM is upgraded

<sup>1/</sup> Ham found no other comments in the docket file in the Commission's public reference room.

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to Class C3, thus increasing the efficiency of use of the spectrum in the public interest, the station will serve much more area and population, all of whose needs will become a factor in its programming, no matter where the station is licensed. It is a fact, challenged by no one, that WKDZ-FM cannot upgrade and continue to provide 3.16 mV/m service to Cadiz; thus it has no choice but to change community of license or not upgrade at all.<sup>2/</sup> WKDZ-FM will continue to provide nighttime 1 mV/m service to Cadiz from its proposed transmitter site, so its move will not deprive Cadiz of nighttime radio service when the station's community of license is changed. The residents of Cadiz will continue to be included in the station's audience, and the station will program to those residents in accordance with the dictates of the marketplace, which is what governs the programming of every radio station. Also, Ham will continue to operate WKDZ(AM), licensed to Cadiz.

3. The commenters all fail to recognize that the proposed upgrade of WKDZ-FM is critical to the economic survival of the station<sup>3/</sup> and that a denial of the upgrade may put Trigg County at risk of losing nighttime service from WKDZ-FM altogether. The

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<sup>2/</sup> Ham attempted to upgrade WKDZ-FM to Class C3 status while keeping the station licensed to Cadiz but was not permitted to do so by the Commission. See Letter from the Assistant Chief of the Allocations Branch to Peter Tannenwald, dated February 3, 1992.

<sup>3/</sup> Ham Comments at p. 16.

programming that residents of Cadiz enjoy cannot be continued without earnings to support it.<sup>4/</sup>

4. Predictably, Southern, which has a strong economic motive to oppose the upgrade of a station whose improved signal will overlap the coverage of its own stations, argues that Oak Grove should be deprived of a first local transmission service because it should be credited with all stations licensed to the Clarksville Urbanized Area.<sup>5/</sup> Southern's argument is based solely on the simple fact, already recognized in the Notice of Proposed Rule Making ("Notice"), that the U.S. Census Bureau has placed Oak Grove inside the Clarksville Urbanized Area. As demonstrated in Ham's initial comments, however, Oak Grove's placement inside the Clarksville Urbanized Area is solely the result of a mechanical application of the Census Bureau's definition of Urbanized Area, and is not an accurate indicator of

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<sup>4/</sup> The Trigg County Board of Education states that "local revenues are able to support" the various kinds of programs the Board mentions and further suggests that Ham's President took the risk of owning a small station when he purchased control of WKDZ-FM and is not entitled to improve the station. Board of Education Comments at page 2. As explained in its initial comments, Ham does not agree that local revenues, which are declining, can continue to support a full local program schedule indefinitely. The opening of a highway bypass that has diverted traffic from Cadiz, the opening of a second local newspaper, and the closing of the local department store have diminished WKDZ-FM's potential advertising market and have made it critical that the station expand its service area. Moreover, there is certainly no principle of law that holds that a new station owner may not seek to improve the facilities of his or her station.

<sup>5/</sup> Two of these stations would be Southern's own WABD(AM) and WCVQ(FM).

the "real life" relationship between Oak Grove and Clarksville.<sup>6/</sup> Southern has not supplied any concrete evidence demonstrating that Oak Grove is in fact "interdependent" with Clarksville as that term has been defined by the FCC in prior cases of this nature. In contrast, Ham has presented detailed factual information, not contradicted by Southern, thoroughly demonstrating that Oak Grove is an entirely distinct community with a separate need for local broadcast service.<sup>7/</sup>

5. Southern cites two cases where changes of community of license were denied. Both of those cases are inapposite here, as both involve significantly different factual situations.

In Fairfield and Norwood, Ohio, 7 FCC Rcd 2377 (MM Bur. 1991), the destination community, Norwood, Ohio, was completely surrounded by the city of Cincinnati, the central city of the Cincinnati Urbanized Area. The Bureau further cited evidence showing only that Norwood was an incorporated community with "at least one bank, a post office and a zip code." Fairfield at 2378. Oak Grove is at the far northern tip of the Clarksville Urbanized Area and is in the Urbanized Area only because of its

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<sup>6/</sup> Comments of Ham at p. 4.

<sup>7/</sup> In arguing that Oak Grove is not entitled to a first service preference, Southern relies on Ham's signal coverage proposal and the size of the population of Oak Grove in relation to that of Clarksville. Comments of Southern at p. 3. As already noted by Ham, however, the most critical consideration is the extent to which the two communities in question are "interdependent." Thus, factors such as signal coverage and relative population size will be overridden by significant evidence (such as that submitted by Ham) of independence of the two communities. Comments of Ham at pp. 5-6.

adjacency to U.S. Highway 41-A, the highway which runs from the center of Clarksville to Fort Campbell.<sup>8/</sup> More important, the evidence of Oak Grove's independence from Clarksville, demonstrated in depth by Ham in its initial comments, is exponentially greater than the evidence of Norwood's independence from Cincinnati as described in the Norwood case.<sup>9/</sup> Oak Grove not only has its own bank, post office and zip code, but also has its own government and a wide array of municipal services and commercial establishments, none of which is dependent on Clarksville for existence or support.<sup>10/</sup>

6. The second case cited by Southern, Van Wert and Monroeville, Indiana, 7 FCC Rcd 6519 (MM Bur., 1992) is also inapposite. There, the Bureau refused to reallocate an FM channel from Van Wert to Monroeville, Indiana, near Fort Wayne. The Bureau relied primarily on the fact that the proposed reallocation would result in no improvement in reception service, since the station was not proposing to relocate its transmitter. Van Wert at 6520. This case stands in almost exact opposition to Ham's proposal, in which Ham does propose to relocate its transmitter to a site that would create a net service "gain" area of nearly 3,000 square kilometers with a population of over 170,000 people.

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<sup>8/</sup> Comments of Ham at p. 4.

<sup>9/</sup> Ham's evidence is not based on its own analysis. Local officials agree that Oak Grove is separate and independent from Clarksville. See Exhibits 5 and 6 to Ham's initial comments.

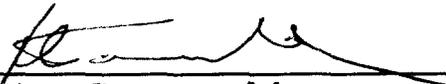
<sup>10/</sup> Comments of Ham at p. 14, Exhibits 4-10.

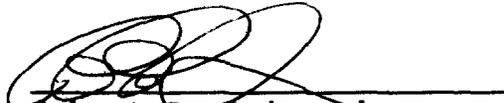
7. Aside from the above, there are two enormous distinctions between the instant case and both Norwood and Van Wert. First, Oak Grove is in a different state from the central city of the Urbanized Area and in almost every respect is vastly more separated from and independent of the central city than in the cited cases. But even more important, neither Norwood nor Van Wert involved an upgrade in station class, so neither promised more efficient use of the spectrum. Ham is proposing an upgrade, with a significant increase in population served; and the upgrade cannot be achieved in any other way but by changing community of license in the geographical direction where Ham proposes to move. Ham's proposal thus offers the public interest benefit of significantly improved reception service which the Bureau found to be lacking in, and ultimately fatal to, the reallocation proposal in Van Wert. To deny the proposal in this proceeding would be to throw the baby out with the bath water, losing the important benefit of the upgrade because of an anomalous Census Bureau linking of communities in different states because of a densely populated highway corridor.

8. WHEREFORE, Ham reiterates its request that the Commission amend its FM Table of Allotments to delete Channel 292A at Cadiz and add Channel 293C3 at Oak Grove, Kentucky, as set forth in the Notice. The benefits are clear and heavily outweigh any possible detriment. No violence will be done to the Commission's allotment principles, as the facts of this case are not inconsistent with the purpose of the policy against giving a

first local transmission service preference to a community in an urbanized area where other stations are located. If the proposed reallocation is approved, Ham repeats that it will promptly file an application for a construction permit authorizing the upgrading of facilities for WKDZ-FM to Channel 29.3C3 at Oak Grove, and will construct the upgraded facilities upon grant of that application.<sup>11/</sup>

Respectfully submitted,

  
Peter Tannenwald

  
Robert B. Primosch

Arent Fox Kintner Plotkin & Kahn  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036-5339  
(202) 857-6024/6353

Counsel for Ham  
Broadcasting, Inc.

March 4, 1994

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<sup>11/</sup> Ham takes this occasion to submit the original of Exhibit 5 to its initial comments, a letter from the Mayor of Oak Grove.

**CERTIFICATE OF SERVICE**

I, Rita L. Jones, do hereby certify that I have, this 4th day of March, 1994, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

H. B. Quinn, Esquire  
Trigg County Attorney  
P.O. Box 186  
Cadiz, KY 42211

Harry C. Martin, Esquire  
Reddy, Begley & Martin  
1001 - 22nd St., N.W., Suite 350  
Washington, DC 20037

W. Howell Hopson, III, Chairman  
Trigg County Board of Education  
202 Main Street  
Cadiz, KY 42211

Mr. D. Bruce Perkins  
Cadiz City Council  
269 LaFayette Street  
Cadiz, KY 42211

Jim Ricks  
Mayor, City of Cadiz  
P.O. Box 436  
Cadiz, KY 42211

Harold Meredith  
Cadiz Chamber of Commerce  
P.O. Box 647  
Cadiz, KY 42211

  
Rita L. Jones

**EXHIBIT 1**



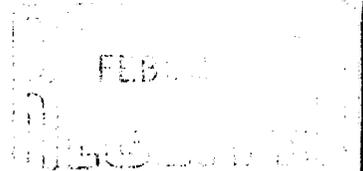
COMMONWEALTH OF KENTUCKY

CITY OF OAK GROVE

P.O. BOX 217 OAK GROVE, KY 42262

PHONE: (502) 439-4646

FAX: (502) 439-1201



February 15, 1994

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

RE: MM DOCKET NO. 93-314  
FM TABLE OF ALLOTMENTS  
OAK GROVE, KENTUCKY

Dear Mr. Caton:

I understand that the Commission has recently proposed to allot an FM frequency to Oak Grove, Kentucky, but has questioned whether Oak Grove merits its own station because Oak Grove is part of the same U.S. Census Urbanized Area as Clarksville, Tennessee, which has radio stations of their own. While it is up to your agency to determine the proper standards for allocating radio frequencies, it would be inappropriate to deny this community its own station based on the notion that Oak Grove and Clarksville are part of a single, independent, economic unit. Regardless of how the U.S. Census Bureau may draw its maps, Oak Grove is separate from Clarksville, viable in its own right, in a different state and with a different life from that of Clarksville. Our political, social and economic activity is focused on Oak Grove, Kentucky, rather than on Clarksville or anywhere else.

The residents of this community, many have been here for generations, consider themselves to be residents of Oak Grove and to be Kentuckians, not Clarksville "suburbanites". We live by Kentucky laws and pay our taxes to the State of Kentucky. We have no common legislative representation, either local, state or federal with Clarksville. We share no governmental services or utility services with Clarksville, Tennessee. We have no common school district with Clarksville, but rather are part of the Christian County, Kentucky, school system. Our citizens apply for permits, licenses, and other needs in Kentucky, either locally or at the County Court House in Hopkinsville, Kentucky. Nothing of that nature comes from Clarksville, Tennessee. Our Police Department is completely independent from Clarksville; they do not share radio frequencies and in fact Clarksville law enforcement Officers may not cross the state line and make arrests in Kentucky. Emergency medical services are provided in Kentucky; ambulances transport patients to Hopkinsville, not Clarksville, Tennessee. We are not served by the municipal bus system in Clarksville. Our banks are all chartered in Kentucky; no Tennessee banks from Clarksville have branches in Oak Grove. We have our own Churches, Civic Clubs and Fraternal Organizations, none of which are connected with or are branches or offshoots of those in Clarksville, Tennessee.

FEBRUARY 15, 1994  
MR. WILLIAM F. CATON, ACTING SECRETARY  
PAGE TWO

Certainly our citizens sometimes travel to Clarksville for shopping and entertainment, but they are just as likely to travel to Hopkinsville and often do so because they can attend to various government and legal affairs there, and also because of more favorable sales taxes in Kentucky. They also do not work predominantly in Clarksville, Tennessee.

Our records show that we currently have a total of 233 businesses licensed to operate in Oak Grove, and the Census Bureau released figures this week showing that our population has grown by 6%, (through the end of 1992), to 3,049 persons. We have one estimate that if we can get our sewer expansion on line quickly, we could grow to as much as 10,000 by the year 2000. As you can see, Oak Grove is an extremely fast growing community, which is another reason we would like to have our own radio station.

I have been Mayor of Oak Grove, Kentucky, since the first of the year, and served on the City Council for eight years before that. During that time, neither the radio stations nor the newspaper in the "Clarksville Urbanized Area" have covered the activities of the City of Oak Grove. Obviously we are doing newsworthy things, however, as there is news coverage of Oak Grove from the Hopkinsville area.

Whatever purpose the Census Bureau's Urbanized Area designation may serve, it should not be taken as indication that Oak Grove, Kentucky, is part of a single community with Clarksville, Tennessee. We are definitely separate, we have our own needs, and we would welcome having our own radio station to meet those needs.

Sincerely,

*Bobby G. Mace*  
Bobby G. Mace, Mayor