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KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

THE MCPHERSON BUILDING

901 FIFTEENTH STREET, N.W., SUITE 1100

WASHINGTON, D.C. 20005-2327

(202) 682-3500

FACSIMILE
(202) 682-3580

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

18TH FLOOR
NINE QUEEN'S ROAD CENTRAL
HONG KONG
(852) 845-8989

SCITE TOWER, SUITE 708
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NEW YORK (212) 836-8689
WASHINGTON (202) 682-3580
LOS ANGELES (310) 788-1200
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BEIJING (861) 512-4760

425 PARK AVENUE
NEW YORK, NY 10022-3598
(212) 836-8000

1999 AVENUE OF THE STARS
SUITE 1600
LOS ANGELES, CA 90067-6048
(310) 788-1000

SQUARE DE MEEÛS 30
1040 BRUSSELS, BELGIUM
(322) 514-4300

WRITER'S DIRECT DIAL NUMBER

(202) 682-3526
(Internet E-Mail Address
irvg@netcom.com)

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April 15, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Amendment of Table Of FM Allotments
Key Colony Beach, Key Largo, and
Marathon, Florida
(MM Docket No. 93-136;
RM-8161 and RM-8310)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client,
Spanish Broadcasting System of Florida, Inc., licensee of Radio
Station WZMQ(FM), Key Largo, Florida, are an original and four
copies of its Opposition To Motion For Leave To File Out Of Cycle
Pleading in the above-referenced FM channel allotment rulemaking
proceeding.

Please direct any inquiries concerning this submission to
the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER

By: Irving Gastfreund
Irving Gastfreund

Enclosures

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 93-136
Of the Commission Rules) RM-8161
Table of Allotments) RM-8310
FM Broadcast Stations)
(Key Colony Beach, Key Largo)
and Marathon, Florida))

TO: Chief, Allocations Branch
Mass Media Bureau

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**OPPOSITION TO MOTION FOR LEAVE
TO FILE OUT OF CYCLE PLEADING**

SPANISH BROADCASTING SYSTEM OF FLORIDA, INC. ("SBS"), licensee of Radio Station WZMQ(FM), Key Largo, Florida, by its attorneys, hereby respectfully opposes the Motion For Leave To File Out Of Cycle Pleading and to strike the Supplemental Joint Comments, both of which submissions were filed in the above-captioned proceeding on March 7, 1994, on behalf of Okeechobee Broadcasters, Inc. ("OBI"), licensee of Radio Station WOKC-FM, Indiantown, Florida; Sunshine Broadcasting, Inc. ("Sunshine"), licensee of Radio Station WSUV(FM), Fort Myers Villas, Florida; and Jupiter Broadcasting Corporation ("JBC"), permittee of Radio Station WADY(FM), Jupiter, Florida (collectively "Commenters"). In support whereof, it is shown as follows:¹

¹ On March 17, 1994, SBS filed its Motion For Extension Of Time in which it requested an extension to and including April 15, 1994 within which to respond to the Commenters' submissions of March 7, 1994. As noted in that Motion For Extension Of Time, counsel for the Commenters indicated that he would not oppose the extension request. Accordingly,
(continued...)

This proceeding traces its origins to a Petition For Rulemaking filed on behalf of SBS almost one and one-half years ago, on December 17, 1992. On June 3, 1993, the Mass Media Bureau released its Notice Of Proposed Rule Making And Order To Show Cause, 8 FCC Rcd 3886 (Mass Media Bureau, Policy and Rules Division 1993). The Notice Of Proposed Rule Making, supra, specified that interested parties were authorized to file comments by no later than July 26, 1993 and reply comments by no later than August 10, 1993. Notice Of Proposed Rule Making, supra, at ¶11.

On July 26, 1993, the Commenters filed their Joint Comments And Counterproposal in this proceeding. That submission was accepted as a counterproposal in this proceeding by the Commission in its Public Notice of August 6, 1993 (Report No. 1958, Mimeo No. 34311 at 2.

In short, the pleading cycle in this case has been completed since August 23, 1993 -- i.e., almost eight (8) months ago. Nonetheless, on March 7, 1994, the Commenters filed their Supplemental Joint Comments in this proceeding, together with a contemporaneously-tendered Motion For Leave To File Out Of Cycle Pleading. In their latter submission, the Commenters seek leave to submit their Supplemental Joint Comments and seek to have the latter filing formally accepted in the docket in this proceeding.

¹(...continued)

SBS' instant submission is timely filed.

In their Motion For Leave To File Out Of Cycle Pleading, the Commenters acknowledge that, under Section 1.415(d) of the Commission's Rules, in notice and comment rulemaking proceedings, such as the instant one, once the filing deadlines for submission of comments and reply comments has passed, no additional comments may be filed in the proceeding unless specifically requested or authorized by the Commission. The Commenters also recognize that any request for leave to file such an untimely and unauthorized pleading in this proceeding must be supported by an appropriate showing of good cause.

The totality of the purported "good cause" showing made by the Commenters in support of the submission of their March 7, 1994 Supplemental Joint Comments is the self-serving claim by the Commenters that, in its Reply in this proceeding filed August 23, 1993 -- i.e., almost two-thirds of a year ago -- SBS purportedly made certain factual allegations regarding the viability of the Commenters' Counterproposal which the Commenters now belatedly seek to label as "misleading" and as "mistakes of fact". See Motion For Leave To File at 2.

The Commenters' allegations hardly begin to form the basis for a good cause showing sufficient to warrant acceptance into the record in this proceeding of their hopelessly-late submissions of March 7, 1994. Even if it were to be assumed, arguendo, that the Commenters were correct in their self-serving allegations that certain factual contentions in SBS' Reply were incorrect, nonetheless, the Commenters have provided absolutely

no justification (much less an adequate showing of good cause) for having delayed in bringing their latest contentions to the Commission's attention for almost two-thirds of a year following the submission of SBS' Reply.

Such dilatory tactics, manifesting gross lack of diligence by the Commenters, should not be tolerated and should not be sanctioned by acceptance into the record of this proceeding of the Commenters' March 7, 1994 Supplement Joint Comments. No rational system of administrative decisionmaking could long endure if the record in a proceeding could be continually be kept open to further submissions by a party where a responsive pleading is filed eight (8) months after the date of filing of the pleading that it purports to address.

In any event, however, as shown in SBS' contemporaneously-tendered Opposition To Supplemental Joint Comments, there is no merit to the substantive contentions contained in the Commenters' Supplemental Joint Comments. Accordingly, no useful purpose whatsoever would be served by acceptance of the latter pleading into the record herein; to the contrary, such acceptance would merely serve to reward unconscionable dilatory tactics and further protract this already lengthy proceeding.

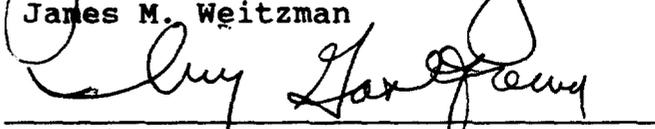
WHEREFORE, the foregoing premises considered, it is respectfully requested that the Motion For Leave To File Out Of Cycle Pleading filed by the Commenters in this proceeding on March 7, 1994 be expeditiously denied and that the Commenters'

Supplemental Joint Comments of March 7, 1994 be summarily
stricken without any consideration whatsoever.

Respectfully submitted,

SPANISH BROADCASTING SYSTEM
OF FLORIDA, INC.

By: 
James M. Weitzman

By: 
Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 682-3536

Its Attorneys

April 15, 1994

CERTIFICATE OF SERVICE

I, Mary Odder, a secretary to the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that I have this 15th day of April, 1994, sent copies of the foregoing Opposition To Motion For Leave To File Out Of Cycle Pleading via First-Class United States mail, postage prepaid, to the following:

Victoria MacCauley, Esq. *
Acting Chief, Allocation Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Ms. Nancy J. Walls,
Communications Industry Analyst *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

William J. Silva, Esq.
Blair, Joyce & Silva
1825 K Street, N.W., Suite 510
Washington, D.C. 20006
Counsel to Richard L. Silva

John Joseph McVeigh, Esq.
Fisher Wayland Cooper and Leader
1255 23rd Street, N.W., Suite 800
Washington, D.C. 20037-1125
Counsel to Key Chain, Inc.

Robert J. Rini, Esq.
Rini & Coran, P.C.
1350 Connecticut Avenue N.W., Suite 900
Washington, D.C. 20036
Counsel to Joint Counterproponents


Mary Odder

* Via Hand-Delivery
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