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February 13, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

Re: MM Docket 94-143

Dear Mr. Caton:

Transmitted herewith on behalf of Busse Broadcasting Corporation, licensee of television station KOLN-TV, Lincoln, Nebraska, and its satellite KGIN-TV, Grand Island, Nebraska, is an original and four (4) copies of its Comments in response to the Notice of Proposed Rule Making in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,



Neal J. Friedman
Counsel for
Busse Broadcasting Corporation

Enclosures
cc: Certificate of Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Amendment of Section 73.606(b),) MM Docket No. 94-143
Table of Allotments,)
Television Broadcast Stations.)
(Albion, Nebraska))

TO: Acting Chief, Allocations Branch, Mass Media Bureau

COMMENTS OF BUSSE BROADCASTING CORPORATION

Busse Broadcasting Corporation ("Busse"), licensee of Television Station KOLN-TV, Lincoln, Nebraska and its satellite, KGIN-TV, Grand Island, Nebraska, by its attorneys, hereby submits its comments in response to the *Notice of Proposed Rule Making* ("Notice"), DA 94-1374, released December 5, 1994, in the above-captioned proceeding.

1. The *Notice* proposes to allot UHF Channel 24 to Albion, Nebraska.¹ The *Notice* stated at ¶1 that the Commission was taking the action on its own motion in order to permit Citadel Communications Co., L.P. ("Citadel") to amend its pending mutually exclusive application for Channel 18 at Albion to specify operation on Channel 24.² The *Notice* further stated that, in the event any other party expresses

¹ In an *Erratum*, DA 95-27, released January 13, 1995, the Commission staff corrected the reference points for the allocation and specified a plus offset for Channel 24

² For the convenience of the reader, Busse will continue its past practice of referring to the existing Channel 8 at Albion (KCAN-TV) as "Albion-8", the proposed Channel 8 at Lincoln as "Lincoln-8" and the proposed Channel 18 at Albion as "Albion-
(continued...)"

an interest in Albion-24, the Commission is prepared to allot Channel 40 to accommodate that interest.

2. In *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Albion, Lincoln and Columbus Nebraska)*, 8 FCC Rcd 2876 (MMB 1993) (“*Report and Order*”), the Commission allotted Channel 18 to Albion. On June 9, 1993, Busse timely filed a Petition for Reconsideration of the staff action, which is still pending. Pappas Telecasting of the Midlands (“Pappas”), licensee of KPTM(TV), Omaha, Nebraska also filed a Petition for Reconsideration on the same date.

3. On July 26, 1993 Citadel filed applications to relocate its KCAN-TV, Channel 8, Albion, Nebraska to Lincoln, Nebraska (FCC File No. BMPCT-930726KI) and substitute Albion-18 for Albion-8 (FCC File No. BMPCT-930726KH). Busse, Pappas and Pulitzer Broadcasting Company (“Pulitzer”), licensee of KETV(TV), Omaha, Nebraska have filed separate informal objections to FCC File No. BMPCT-930726KI. Busse has also filed a petition to deny FCC File No. BMPCT-930726KH. Fant Broadcasting Company of Nebraska, Inc. (“Fant”) has filed a competing application for Albion-18 (FCC File No. BPCT-931115KF).

4. The *Report and Order* stated: “Grant of this petition for rule making is premised on Citadel’s pledge that it will file an application to operate Channel 18 at Albion as a satellite of its ABC affiliate, Station KCAU, Sioux City, Iowa. Were it not for this pledge, we would not consider granting this proposal.” *Report and Order* at

² (...continued)
18.” The proposed Channel 24 at Albion will be referred to as “Albion-24.”

2878 (emphasis supplied). On November 23, 1994, Busse filed a Petition for Stay of the processing of the Albion-18 and Lincoln-8 applications pending disposition of its still-unresolved Petition for Reconsideration. Busse's Petition for Stay noted the fallacy of the staff action hinging the Albion-18 and Lincoln-8 allocations on continued ABC network service at Albion. Busse noted at that time that the Commission does not regulate program formats or changes thereof. Nearly 20 years ago, the Commission determined that such changes were best left to the marketplace. *Policy Statement, Changes in the Entertainment Formats of Broadcast Stations*, 60 FCC 2d, 858 (1976), *aff'd sub nom. FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981) ("*Policy Statement*"). Dating back to the earliest days of radio, the Commission was directed to leave programming decisions to licensees. In *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940), the Court found that Congress had intended for licensees to "survive or succumb according to [their] ability to make ... programs attractive to the public." *Id.* at 475.

5. Citadel itself has now recognized the futility of this gesture. Its recent statements to the Commission have indicated a retreat from its previous pledge to provide ABC network service at Albion. Citadel's commitment from ABC for network affiliations at Lincoln and Albion expired on December 31, 1994. In a January 17, 1995 letter to the Commission, Citadel claimed to have obtained a six-month extension, but has not provided a copy of the letter nor has it amended its pending applications to so reflect.

6. The Albion-18 allocation can never be finalized under existing precedent, under which the Commission has determined that the marketplace should dictate format changes. *Policy Statement, supra*. Even if it did regulate formats, the Commission could not compel ABC to provide network service to Lincoln or Albion. Moreover, as events of the past year have shown, there is no guarantee that ABC would continue its affiliation at either Lincoln or Albion for the foreseeable future. Thus, the Commission as a matter of law and public policy cannot justify its allocation of Albion-18 and Lincoln-8 on ephemeral ABC network service and must use its traditional allocation criteria established in *Television Assignments, Sixth Report and Order*, 41 FCC Rcd. 148, 167 (1952).

7. The allocation of as many as two additional channels to tiny Albion, Nebraska (1990 pop. 1,380-city, 6,607-county) makes no economic sense. KCAN-TV presently operates as a satellite of Citadel's KCAU-TV (ABC, Channel 9, Sioux City, Iowa). Citadel has stated previously that "Albion is not capable of supporting a full-service station." See Citadel's Supplement to Petition for Rule Making, filed July 30, 1991 at p.5.

8. The Commission's 1991 staff study of the television industry painted a bleak future economic picture. *Broadcast Television in a Multi-Channel Marketplace*, 6 FCC Rcd 3996 (1991). The authors wrote:

Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component of the video mix, small market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark.

9. It is against this backdrop that the Commission seeks to insert at least two, and possibly three, full-service stations into Albion, which has demonstrated over the years that it cannot even support one full-service station. The purpose of all of this is not some high-minded effort to bring a diversity of voices to this rural community, part of the Lincoln and Kearney-Hastings market (DMA 100). There is no demonstrated public demand for additional television service. The sole purpose of this *Notice* and the companion proceedings is to accommodate Citadel's expressed desire to relocate Channel 8 from Albion to Lincoln for its own private gain.

10. This might make some sense if there were no way to bring additional service to Lincoln. The fact of the matter, as Busse has pointed out previously, is that there are *two* vacant and unapplied for allocations available in Lincoln -- Channels 45 and 51. Without any disruption of the Television Table of Allotments, the Commission's goal of continued ABC Network service in Albion and Citadel's goal of a new station in Lincoln could be met. The *Sixth Report and Order, supra*, expressly rejected the notion that: "Section 307(b) [of the Communications Act of 1934, as amended,] requires the Commission to treat VHF channels separately from UHF channels in making the Assignment Table." *Id.* at 207; *aff'd Fort Harrison Telecasting Corporation v. FCC*, 324 F.2d 379 (D.C. Cir. 1963), *cert. denied*, 376 U.S. 915 (1964). In the intervening years, improved receivers and transmission systems together with public awareness and acceptance of UHF television and increased cable penetration have blurred the distinctions between UHF and VHF stations further.

11. The proposed allotment makes even less sense in light of the impending conversion from the existing NTSC television transmission system to the new advanced television system ("ATV"). In order to accommodate an orderly transition and meet the increased spectrum requirements of ATV, the Commission is proposing to require existing television licensees to broadcast on two channels for a specified period of time. *Advanced Television Systems, First Report and Order*, 5 FCC Rcd 5627 (1990). On January 13, 1995, the Association of Maximum Service Telecasters and a coalition of television licensees, including Busse, submitted to the Commission its proposed ATV allotment/assignment approach for implementing the transition from NTSC to ATV. The draft proposal envisions ultimate UHF ATV allocations for KCAN-TV, (Channel 65), KOLN-TV (Channel 31), KGIN-TV (Channel 24) and KCAU-TV (Channel 49). Thus, whatever perceived advantage Citadel may see in Lincoln-8 would be short-lived. More importantly, the public interest demands that the Commission not jeopardize its goal of an orderly conversion to ATV in order to accede to the whim of a single licensee.

12. The conversion from NTSC to ATV will require more television spectrum than is presently available. Television translators and LPTV stations are not protected in the allotment scheme. Many existing full-power stations will suffer interference and reduced coverage as a result. The industry plan proposes to utilize both VHF and UHF frequencies in order to minimize the impact. The Commission's plan, which proposes only UHF channels, would be even more restrictive as the 12 VHF channels would be

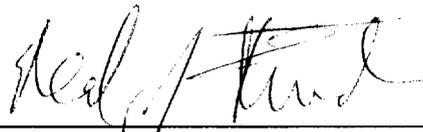
excluded. The staff proposal expressed in the *Notice* is not a “preferential arrangement of allotments,” but a needless squandering of scarce broadcast spectrum.

For the forgoing reasons, Busse Broadcasting Corporation respectfully requests that the Commission reverse its previous determination to allot Channel 24 (and possibly Channel 40 as well) to Albion, Nebraska and that it not amend the Television Table of Allotments as proposed in the *Notice*.

Respectfully Submitted,

Busse Broadcasting Corporation

By



Vincent A Pepper
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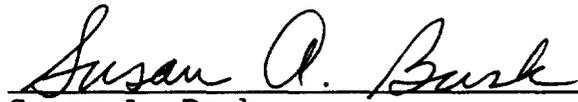
February 13, 1995

CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, L.L.P., do hereby certify that a true and correct copy of the foregoing Comments was duly served by U.S. mail, first-class, postage prepaid on the 13th day of February, 1995, upon the following individuals:

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Susan A. Burk