

ORIGINAL

ANN BAVENDER\*  
JAMES A. CASEY  
ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
PAUL J. FELDMAN\*  
ERIC FISHMAN\*  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
CHARLES H. KENNEDY\*  
KATHRYN A. KLEIMAN  
PATRICIA A. MAHONEY  
M. VERONICA PASTOR\*  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
MARVIN ROSENBERG  
KATHLEEN VICTORY\*  
HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

ROBERT L. HEALD  
(1956-1983)  
PAUL D.P. SPEARMAN  
(1938-1982)  
FRANK ROBERSON  
(1936-1961)  
RUSSELL ROWELL  
(1948-1977)

RETIRED  
EDWARD F. KENEHAN  
FRANK U. FLETCHER

CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
SHELDON J. KRYS  
U.S. AMBASSADOR (ret.)

OF COUNSEL  
EDWARD A. CAINE\*

WRITER'S NUMBER  
(703) 812-

0420

March 3, 1995

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

MAR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast  
Stations (Woodville, Mississippi; Clayton and Jena, Louisiana)  
MM Docket No. 94-115, RM-8508

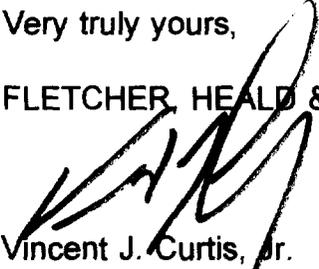
Dear Mr. Caton:

Transmitted herewith, on behalf of Radio KPEL-FM, Inc. and Gary P. Alvarez, are an original and four copies of their "Motion to Dismiss" in the above-referenced proceeding.

Should any additional information be necessary, please contact the undersigned.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

  
Vincent J. Curtis, Jr.  
Counsel for Radio KPEL-FM, Inc. and  
Gary P. Alvarez

VJC:mah  
Enclosure

No. of Copies rec'd  
List ABCDE

044

ORIGINAL

BEFORE THE

**Federal Communications Commission**

RECEIVED

WASHINGTON, D.C. 20554

MAR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Woodville, Mississippi; )  
Clayton and Jena, Louisiana) )

MM Docket No. 94-115  
RM-8508

DOCKET FILE COPY ORIGINAL

Directed to: Acting Chief, Allocations Branch

Motion to Dismiss<sup>1</sup>

Come now Radio KPEL-FM, Inc., the licensee of Station KPEL-FM, Erath, Louisiana (KPEL-FM), and Gary P. Alvarez, a proponent of a counterproposal in this proceeding (Alvarez), by their attorneys, and respectfully request that the Commission dismiss the Motion to File Comments Nunc Pro Tunc filed by PDB Corporation. In support, the following is stated:

1. PDB's filing is totally unwarranted and clearly without authority or precedent and must be dismissed immediately. PDB's President, Don Brady, obviously believes that the deadlines established by the Commission<sup>2</sup> do not apply to PDB. As reflected

---

<sup>1</sup>Although the PDB Motion indicates that it was filed on January 30, 1995, apparently because of the use of an erroneous zip code (23209 rather than 22209), the notice was recently received. In any event, as a totally unauthorized filing, there is no scheduled time to reply.

<sup>2</sup>Not only has PDB consistently ignored deadlines in this proceeding, but the Commission recently dismissed PDB's construction permit for State College, MS for the second time (BPH-920603JY, Public Notice, Report No. 22035, December 1, 1994).

herein, PDB has a track record of ignoring the deadlines set by the Commission. Refusing to accept its own failures, PDB seeks to attack KPEL-FM and Alvarez for their legitimate and authorized filings.<sup>3</sup> If the Commission were to accept PDB's position, it would be creating a precedential nightmare and would undermine its procedural protections.

2. PDB, at this late date,<sup>4</sup> seeks to throw out the legitimately and timely filed counterproposal by Alvarez and to restart the proceeding. The Alvarez counterproposal was filed on November 25, 1994, the date that the Commission established for filing comments and/or counterproposal in the NPRM establishing this proceeding. See, 9 FCC Rcd 5718 (M. Med. Bur. 1994). PDB was served a copy of the Alvarez filing. PDB, the proponent, did not file anything on the date set for comments, including an indication that it would file for the allocation as proposed, as required by the NPRM. In accordance with established procedures, the Commission put the Alvarez counterproposal on public notice (Report No. 2046, released December 12, 1994). Anyone having any comments directed to the counterproposal was required to file them no later than December 27, 1994. Except for Alvarez, who merely affirmed his willingness to file for and build the

---

<sup>3</sup>KPEL-FM and Alvarez do not intend to engage PDB in its unwarranted and fanciful personal allegations as to motive. Needless to say, the Commission has previously found such arguments in allocation proceedings irrelevant. See, FM Channel Assignments (Eatonton and Sandy Springs, GA, et al., 70 RR 2d 182 (M. Med. Bur., 1991). (As a general matter, the motivations of the parties are not relevant in an allotment proceeding. The public interest is better served by an evaluation of parties' potential service contributions based upon objective factors.)

<sup>4</sup>A chronology of the relevant times and events is shown at Exhibit No. 1. As can be seen, PDB has missed each and every important scheduled response date.

station as he proposed in his counterproposal, no one else filed any comments, including PDB, who filed nothing.

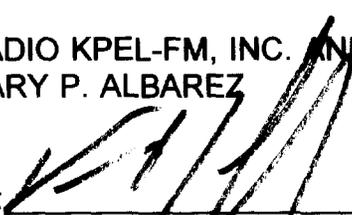
3. More than thirty (30) days later, PDB comes to the Commission and demands that the proceeding be terminated and the Albarez counterproposal be thrown out. PDB offers no reason why it could not have filed its comments on the Albarez counterproposal in a timely manner or under what color of authority such action could be taken. If the Commission would consent to such a request, it would establish a precedent that would totally undermine the procedural rules and wreak havoc to the allocation process.

#### Conclusion

It is clear that PDB's motion is unwarranted, without precedent and contrary to established procedures. Accordingly, the premises considered, it is respectfully requested that the Motion to File Comments Nunc Pro Tunc by PDB Broadcasting be immediately dismissed and that this rulemaking proceed to adoption of the counterproposal submitted by Gary P. Albarez.

Respectfully submitted,

RADIO KPEL-FM, INC. AND  
GARY P. ALBAREZ

By: 

Vincent J. Curtis, Jr.

Their Attorney

FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 N. 17th Street, 11th Floor  
Rosslyn, Virginia 22209  
(703) 812-0400

March 3, 1995

The following is a time-line of relevant dates in the rule making proceeding whereby PDB Broadcasting sought to upgrade the allotment for its construction permit at Woodville, Mississippi:

- June 13, 1994 - Construction permit for WLGG(FM), Woodville, Mississippi expired.
- June 17, 1994 - Commission released Report and Order, Woodville, Mississippi and Clayton, Louisiana, 9 FCC Rcd 2769 (M. Med. Bur. 1994), denying upgrade request for WLGG(FM) based on the filing of Clayton FM Partnership application for station at Clayton, Louisiana, precluding deletion of Channel 300A at Clayton.
- July 20, 1994 - PDB Broadcasting (Brady) filed "Petition for Rule Making" seeking upgrade of WLGG(FM) on Channel 299C3 through channel substitution at Jena, Louisiana.
- August 12, 1994 - Commission cancelled construction permit for WLGG(FM) and deleted call letters (by letter from Dennis Williams, Chief, FM Branch, Reference 1800B3-JDB, signed by Laura Romonko).
- September 30, 1994 - PDB Broadcasting filed application for reinstatement of construction permit. (This should have been filed no later than July 13, 1994.)
- October 4, 1994 - Commission released Notice of Proposed Rule Making and Order to Show Cause, Woodville, Mississippi; Clayton and Jena, Louisiana, 9 FCC Rcd 5718 (M. Med. Bur. 1994), proposing the requested upgrade at Woodville and establishing a comment date of November 25, 1994, and a reply comment date of December 12, 1994
- October 26, 1994 - Radio KPEL-FM, Inc. filed "Motion for Stay of Procedural Dates," "Objection," and "Motion to Terminate."
- November 25, 1994 - Gary P. Alvarez filed "Comments and Counterproposal" proposing the deletion of Channel 299A at Woodville and the allotment of Channel 299C3 at Liberty, Mississippi - PDB filed nothing.

- December 8, 1994 - PDB Broadcasting filed a "Motion to Withdraw" seeking to withdraw its upgrade proposal and terminate the proceeding. (This should have been filed no later than November 25, 1994.)
- December 12, 1994 - Commission released Public Notice, Report No. 2046, released December 12, 1994, of Alvarez counterproposal and set a reply comment date of 15 days after the notice (December 27, 1994).
- December 12, 1994 - Alvarez filed "Reply Comments" opposing PDB's effort to terminate the proceeding.
- December 27, 1994 - Alvarez filed "Reply Comments on Counterproposal" reaffirming his intent to apply for the Liberty channel if it is allotted - PDB filed nothing further.
- January 30, 1995 - PDB mailed an additional pleading and another counterproposal, which he claims is for the docket originally established by the October 4 NPRM. (Any comments on the Alvarez Counterproposal should have been filed no later than December 27, 1994. Moreover, pursuant to Section 1.420(d), counterproposals may be advanced in initial comments only and will not be considered if advanced in reply comments. Therefore, PDB's "counterproposal" is an unauthorized pleading.)

**CERTIFICATE OF SERVICE**

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Motion to Dismiss" were sent this 3rd day of March, 1995, by first-class United States mail, postage prepaid, to the following:

Dennis Williams\*  
Chief, FM Branch  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 332  
Washington, D.C. 20554

Pamela Blumenthal\*  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8308  
Washington, D.C. 20554

Donald B. Brady, President  
PDB Corporation  
204 Duncan  
Jackson, Mississippi 39202

James J. Popham, Esquire  
Association of Independent Television  
Stations, Inc. (INTV)  
1320 19th Street, N.W.  
Suite 300  
Washington, D.C. 20036  
Counsel for Little River Radio Company

\*By Hand Delivery

  
Mary A. Haller