

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

ORIGINAL
FLETCHER, HEALD & HILDRETH, P.L.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
(1958-1983)
PAUL D.P. SPEARMAN
(1938-1982)
FRANK ROBERSON
(1936-1981)
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-

RECEIVED

March 13, 1995

MAR 13 1995

BY HAND DELIVERY

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: Amendment of Section 73.202(b), Table of Allotments,
FM Broadcast Stations (Burlington, Colorado; Brewster,
Kansas) (MM Docket No. 94-134; RM-8538, RM-8589)

Dear Mr. Caton:

On behalf of KNAB, Inc., there is transmitted herewith an original and four copies of its "Motion to Dismiss" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,



Ann Bavender
Counsel for KNAB, Inc.

AB:mah
Enclosures

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Burlington, Colorado;)
Brewster, Kansas))

MM Dkt. No. 94-134
RM-8538
RM-8589

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To: Chief, Allocations Branch

MOTION TO DISMISS

KNAB, Inc. ("KNAB"), by its attorneys, requests the Commission to dismiss the "Reply Comments" filed by Bruce Corman, Kay Hanley, and Charley P. Barnes ("Petitioners") on February 27, 1995 in the above-captioned proceeding in which it is proposed to amend the FM Table of Allotments. Alternatively, if the Commission should deny this request for dismissal, KNAB requests leave, and an extension of time subsequent to any denial, to respond to Petitioners's Reply Comments in order to correct inaccuracies contained in the Reply Comments. With respect thereto, the following is presented:

Petitioners's Reply Comments must be dismissed as grossly untimely. The Reply Comments improperly commingle two separate responses with different due dates. Any reply comments in response to KNAB's comments regarding Petitioners's proposal to allot Channel 257C1 at Burlington, Colorado were due January 27, 1995, as clearly set forth in the Notice Of Proposed Rule Making in this proceeding. The response filed on February 27, 1995 was

supposed to be limited to KNAB's counterproposal to allot Channel 257C1 at Brewster, Kansas, as clearly specified in Public Notice Report No. 2056, released February 10, 1995. However, the vast majority of Petitioners's Reply Comments do not speak to the counterproposal but rather address KNAB's comments regarding the Burlington, Colorado matter. Since Petitioners's Reply Comments on the Burlington matter were due January 27, 1995, they must be dismissed since they were filed a month late.¹ Any portions of Petitioners's Reply Comments addressing KNAB's Brewster counterproposal are so intertwined with Petitioners's untimely reply comments regarding the Burlington proposal that the entire Reply Comments must be dismissed.

It is obvious that Petitioners, having until recently participated in this proceeding pro se, belatedly retained communications counsel only to learn that it was far too late to respond to any comments regarding the Burlington proposal, that it was impermissible to respond to any reply comments regarding the proposal, and that it was fatal not to have timely verified their Petition For Rulemaking after not once but twice having

¹That portion of Petitioners's Reply Comments addressing Petitioners's failure to verify their Petition For Rulemaking constitutes an unauthorized response to KNAB's reply comments regarding the Burlington, Colorado proposal. The Commission's rules to not permit such a response and Petitioners's Reply Comments must be dismissed for this reason also. Moreover, even if that portion of Petitioners's Reply Comments addressing KNAB's reply comments could be construed as an opposition to KNAB's motion to dismiss included with KNAB's reply comments, such an opposition would have been due February 9, 1995 and must be dismissed as untimely.

been given an opportunity to do so by the Commission.² Faced with these facts, Petitioners nevertheless attempted to file the untimely and unauthorized responses and verification, attempting to submit them on the date for comments regarding KNAB's Brewster counterproposal. Accordingly, Petitioners's Reply Comments must be dismissed.

Alternatively, if the Commission should deny KNAB's request to dismiss Petitioners's "Reply Comments", KNAB requests leave, and a fifteen day extension of time subsequent to any denial, to file a response to Petitioners's "Reply Comments." Grant of the request is clearly mandated by basic fairness and acceptance of such a response would be in the public interest as Petitioners's Reply Comments contain important inaccuracies which must be corrected in order that the record in this proceeding is fair and complete.

WHEREFORE, for the foregoing reasons, KNAB, Inc. requests that the Commission dismiss Petitioners's Reply Comments as untimely and unauthorized, or, alternatively, if the request for dismissal is denied, KNAB, Inc. requests leave, and a fifteen day

²The Commission's docket records clearly indicate that on December 5, 1994, Petitioners filed a one-page letter. No second page containing an affidavit verifying the Petition For Rulemaking was attached. Petitioners's postal receipt in no way indicates that more than one page was filed.

extension of time subsequent to the denial, to file a response to the Reply Comments.

Respectfully submitted,

KNAB, INC.

By:



Richard Hildreth

Ann Bavender

Its Attorneys

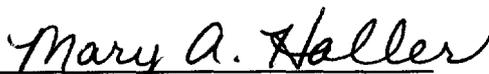
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

March 13, 1995

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 13th day of March, 1995, by first-class United States mail, postage prepaid, to the following:

John F. Gorziglia, Esquire
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for Bruce Corman, Kay Hanley
& Charley P. Barnes


Mary A. Haller
Mary A. Haller