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August 7, 1995

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

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AUG 7 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton

On behalf of KRIG, Inc. licensee of Station KRIG(FM), Nowata, Oklahoma, there are herewith submitted an original and four (4) copies of its Response to Order To Show Cause in MM Docket No. 94-100.

Sincerely



Lawrence N. Cohn

Enclosure

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AUG 7 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

BEFORE THE

# Federal Communications Commission

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 94-100
Table of Allotments	)	RM-8509
FM Broadcast Stations	)	RM-8549
(Okmulgee, Nowata, Pawhuska,	)	RM-8550
Bartlesville, Bixby, Oklahoma, Rogers,	)	
Arkansas)	)	

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

### Response to Order To Show Cause

KRIG, Inc. ("KRIG"), licensee of Station KRIG(FM), Nowata, Oklahoma, by its counsel, hereby submits this Response to the Order To Show Cause ("Order") issued by the Chief of the Commission's Allocations Branch in the above-captioned proceeding on July 17, 1995. KRIG continues to oppose the change of KRIG'S operating channel to 285A, and hereby explains why its license should not be modified in that manner.<sup>1/</sup>

<sup>1/</sup> KRIG is frankly puzzled by the Commission's Order insofar as it specifically offers KRIG the opportunity to submit information as to "why its license should not be modified"

(continued...)

KRIG operates on Channel 232A at Nowata, and has requested an upgrade to Channel 286C3. KRIG has been directed by the Order to show cause why its operating license should not be changed to 285A. A change was also sought by Singer Broadcasting Group, Inc. (now KJMM, Inc.) ("Singer"), licensee of Station KJMM in Bixby, Oklahoma, which sought a mutually-exclusive upgrade of its station from Channel 287C3 to 287C2.<sup>2/</sup> The FCC notes in the Paragraph 3 of the Order that, according to its computations, the proposed upgrade of KJMM would provide additional service to a total of 194,026 additional persons within 3,796 square kilometers, while the proposed upgrade of KRIG to Channel 286C3 would provide additional service to only 32,632 additional persons within 2,234 square kilometers.

First of all, KRIG understands that the purpose of the Order is, as stated therein, to allow the Commission "to proceed with [the]

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<sup>1/</sup> (...continued)  
(Order, Para. 7), yet states that the Order "does not afford [KRIG] an additional opportunity to comment on the merits of the proposals set forth in the Notice of Proposed Rulemaking or the proposal advanced in Singer's counterproposal." (Order, Para. 4).

<sup>2/</sup> An application has been granted by the FCC to transfer control of the licensee from John Singer to Perry Broadcasting Co., Inc. ("Perry") (BTCH-950418GH, granted June 6, 1995).

analysis of the competing upgrade proposals at Bixby and Nowata," and that the Commission has not reached a decision on the ultimate outcome of this proceeding. KRIG further trusts that when the Commission finally does make a comparison of the Bixby and Nowata proposals, it will consider the qualitative difference between them (i.e., the number of existing aural services in the respective gain areas), and will not limit its review to the gross number of individuals who will (or may, see below) receive additional services under the two proposals.

Even more importantly, KRIG objects to the proposal to change KRIG's channel of operation to 285A because, while it would undoubtedly disrupt the listening patterns of KRIG's loyal audience, there is nothing in the record to demonstrate that approval of the proposed upgrade of KJMM would result in the public interest benefits which the Commission obviously anticipates.

KRIG noted in its Reply Comments (filed on December 5, 1994) that the proposed upgrade of KJMM to Channel 287C2 can not be achieved at the station's proposed site, and that Singer never made a commitment to the FCC that, if the proposed upgrade were approved, Singer would move the station's transmitter site so as to achieve

the increased service which is the basis for the alleged superiority of its proposal over the one made by KRIG. Although it was given the opportunity to do so, Singer was able to finesse its position because this issue was brought to the Commission's attention in KRIG's reply comments.

Of course, the intentions of Perry Broadcasting Co., Inc., the approved transferee of KJMM, Inc., are entirely unknown to the Commission. Is Perry committed to changing the station's transmitter site if the KJMM channel upgrade is approved? The Commission does not, but must, know the answer to this question before this proceeding can be fairly resolved. Perry's failure to make an unequivocal statement that it will move its licensed transmitter site<sup>2/</sup> if this is necessary to achieve the gains which have been advanced by the current licensee as the basis for the superiority of the Bixby proposal over the one advanced KRIG should be construed by the Commission as tacit acknowledgment that Perry does not intend to relocate the station's transmitter if the Bixby proposal is approved, and that station KJMM will therefore not

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<sup>2/</sup> The Order refers to singer as the permittee of Station KJMM. The station was granted a license by the Commission on April 17, 1995 (BLH-950112KA).

achieve the service gains which have been advanced as justification for that proposal.<sup>4/</sup>

The ball is now in Perry's court. If Perry has a sincere interest in the Bixby proposal advanced by Singer, it will now make a clear representation to the FCC (which KRIG will monitor to assure compliance), that if it is granted an upgrade of Station KJMM to Channel 287C2, it will construct the station at a new site, if this is what is required to achieve the service gains which have been put forward as the reason why the Bixby upgrade proposal should be granted and the Nowata upgrade proposal of KRIG should be denied. The Commission should require a similar commitment from Singer to assure that the proposed gains at Bixby would be achieved if the Commission granted its proposal but the approved transfer of control transaction is not consummated. If Singer and/or Perry remain silent, the FCC must conclude that the Bixby proposal is not viable and so there would be no need for a comparative evaluation

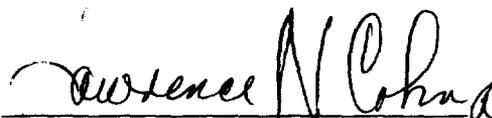
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<sup>4/</sup> Although it has not participated in the proceeding, a copy of this pleading is being sent by certified mail to the President of Perry.

of anticipated service gains resulting from the Bixby and Nowata proposals as undertaken by the Commission in Paragraph 3 of the Order.

Respectfully submitted

KRIG, INC.

A handwritten signature in cursive script, reading "Lawrence N. Cohn". The signature is written in dark ink and is positioned above a horizontal line.

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Its Counsel

Date August 7, 1995

CERTIFICATE OF SERVICE

I, Lula Parker, a secretary in the Law Firm of Cohn and Marks, hereby certify that I have, this 7th day of August, 1995, caused to be delivered by First Class U.S. mail, postage pre-paid, or by hand, as indicated, the foregoing "RESPONSE TO ORDER TO SHOW CAUSE" as follows:

John A. Karousos \*  
Chief, Allocations Branch  
Policy & Rules Division, Mass Media Bureau  
Federal Communications Commission  
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(By Certified Mail)

  
Lula Parker

\* BY HAND DELIVERY