

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 30 1995

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Stamping Ground, Kentucky))

MM Docket 95-28
RM-8593

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

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**MOTION TO ACCEPT
SUPPLEMENT TO COUNTERPROPOSAL**

Mortenson Broadcasting Company of Kentucky, L.L.C. ("MBC"), by its counsel, hereby requests leave to file a supplement to its Counterproposal of April 24, 1995, currently pending in this proceeding. The attached Supplement is filed at this time in view of a new development that bears directly on the acceptability of the Counterproposal. Pursuant to Section 1.415(d) of the Commission's Rules, the Commission can consider a Supplement if in its discretion the information can assist it in resolving a proceeding. See e.g., South Congaree and Batesburg, South Carolina, 5 FCC Rcd 7480 at note 3 (1990) and

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Live Oak and St. Augustine, Florida, 4 FCC Rcd 758 at note 4
(1989).

MBC's Counterproposal requested the allotment of Channel 240A to Nicholasville, Kentucky. MBC operates daytime only AM Station WCGW at Nicholasville and desires to operate a full-time station to serve the residents of Nicholasville. MBC does not know why its Counterproposal has not been accepted and placed on a Public Notice yet. The channel study submitted in support of its proposal revealed only one short spacing -- to the previously licensed coordinates of Station WRSL-FM, Stanford, Kentucky. But, that station already had been granted a one-step upgrade application (BPH-941027IG) to move to Channel 242C3 and the allotment of Channel 240A to Nicholasville meets the spacing requirement to the permit issued to Station WRSL-FM.

The attached Supplement reports the filing of a license application by Station WRSL-FM for its upgraded facility on Channel 242C3 (BLH-950727KA), announced by Public Notice of August 8, 1995, Report No. 23566.

In filing its supplement, MBC will not use this opportunity to argue the merits of its Counterproposal. Rather, MBC will confine its remarks at this time to matters relating to the acceptance of its Counterproposal.

Accordingly, MBC respectfully urges the Commission to consider the attached Supplement for consideration in this proceeding.

Respectfully submitted

**MORTENSON BROADCASTING COMPANY
OF KENTUCKY, L.L.C.**

By: 
Mark N. Lipp

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Its Counsel

August 30, 1995

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SUPPLEMENT TO COUNTERPROPOSAL

Mortenson Broadcasting Company of Kentucky, L.L.C. ("MBC"), licensee of daytime only Station WCGW(AM), Nicholasville, Kentucky, and proponent for the allotment of Channel 240A to Nicholasville, Kentucky, by its counsel, hereby submits a Supplement to the Counterproposal of April 24, 1995. MBC has separately filed a motion to accept this supplemental pleading. By these supplemental comments, MBC does not intend to argue the merits of its counterproposal nor respond to matters raised in the Reply Comments filed by Scott County Broadcasting, Inc. ("Scott County"), except insofar as that reply relates to the acceptability of MBC's Counterproposal.

BACKGROUND

1. The Notice of Proposed Rule Making, 10 FCC Rcd 2301 (1995) proposed the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky, and modification of the permit for Station WKYI(FM) accordingly.^{1/} On April 24, 1995, MBC filed a timely Counterproposal to allot Channel 240A to Nicholasville so that MBC can operate a full-time station to serve residents of Nicholasville who are only able to receive MBC's local programming during the day. On May 9, 1995, Scott County filed reply comments arguing that the Nicholasville proposal is unacceptable for consideration in this proceeding because it is short spaced to the license site for Station WRSL-FM, Stanford, Kentucky, on Channel 240A. However, Scott County recognized that Station WRSL-FM received a construction permit to specify Channel 242C3 (BPH-941027IIG) which superseded the previous short spacing to the license site. Nevertheless, Scott County described MBC's counterproposal as contingent because Channel 242C3 at Stanford was unbuilt at that time and the construction of that facility was "uncertain."

2. MBC has delayed responding to Scott County because MBC was aware that the Stanford facility was being constructed. In fact, the license application to cover construction of Channel 242C3 at Stanford was filed on July 27, 1995, and announced by

^{1/} Station WKYI(FM) subsequently received a grant of its license application (BLH-941214KY).

Public Notice on August 8, 1995, Report No. 23506. (A copy is attached.) Therefore, MBC is filing this supplement to respond to Scott County's characterization of MBC's proposal as "uncertain" and to update the record in this proceeding to reflect Station WRSL-FM's license application.

3. MBC is unaware of any reason for the Commission's delay in accepting its counterproposal for the allotment of Channel 240A to Nicholasville. In the event that Scott County is correct that the delay was attributed to the unbuilt construction permit for Station WRSL-FM, then there is no longer any reason to delay accepting MBC's proposal and placing it on Public Notice to elicit reply comments.

4. Nevertheless, MBC maintains that its counterproposal was acceptable when filed and was properly based on the issuance of a construction permit which replaced Station WRSL-FM's licensed facility.

5. The Commission's consistent and longstanding policy is to accept proposals and allot channels based on the "contingency" that an existing short spacing is eliminated by another outstanding authorization. The cases in which the Commission has granted such allotments are too numerous to cite, but MBC will cite a few of more recent cases which are on point. See e.g., Linden, Texas, (DA 95-1702, rel. Aug. 7, 1995) at note 1; Bagdad, Arizona, 10 FCC Rcd 6117 (1995) at note 2; Cordova and Dora, Alabama, 10 FCC Rcd 6115 (1995) at note 6.

6. Thus, it is clear from these cases and numerous other cases like them that the Commission routinely accepts and grants allotments which do not meet the spacing requirements to a license when that license has been replaced by the issuance of a subsequent construction permit.

7. This policy is in accordance with the Commission's rules which proscribe only the filing of an application (or rule making petition) which is contingent on the grant of another application for a new station or for changes in facilities of an existing station. Section 73.3517 of the Commission's Rules. But, this rule does not regard construction permit authorizations as contingent. The Commission staff would be making a major change in policy if it were no longer to accept petitions which met the spacing requirements to a construction permit. In this regard, Section 73.208(a)(1)(i) of the Commission's Rules expressly state that it is permissible to specify a reference point which meets the spacings to an authorized transmitter site. The rule does not require that the authorization must only be a license.

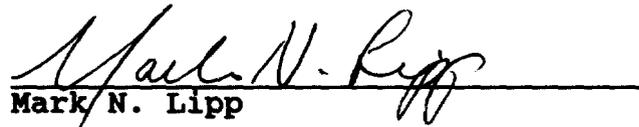
8. Thus, it is clear that the MBC counterproposal was acceptable when filed. Even if the Commission regards the proposal as contingent on the filing by WRSL-FM of a license application, that contingency did not make the Nicholasville counterproposal unacceptable. But, now, even that "contingency" has been removed, as reported by this supplement.

Accordingly, Mortenson Broadcasting Company of Kentucky, L.L.C., respectfully urges the Commission to accept its counterproposal for Channel 240A at Nicholasville, Kentucky, and issue a Public Notice.

Respectfully submitted

**MORTENSON BROADCASTING COMPANY
OF KENTUCKY, L.L.C.**

By:


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Its Counsel

August 30, 1995



PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 632-0002

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August 08, 1995

REPORT NO. 23566

BROADCAST APPLICATIONS

<u>STATE</u>	<u>FILE NUMBER</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>NATURE OF APPLICATION</u>
AM BROADCAST STATION APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING				
NC BR	-950725YB	WGHB	RIVERCITY RADIO, INC. FARMVILLE, NC	RENEWAL OF LICENSE
NC BR	-950725YD	WRXO	ROXBORO BROADCASTING CORP. ROXBORO, NC	RENEWAL OF LICENSE
NC BR	-950725YE	WSTP	THE DALTON GROUP, INC. SALISBURY, NC	RENEWAL OF LICENSE
NC BR	-950725YF	WWWC	FOOTHILLS MEDIA, INC. WILKESBORO, NC	RENEWAL OF LICENSE
NC BR	-950725YG	WVOE	EBONY ENTERPRISES, INC. CHADBOURN, NC	RENEWAL OF LICENSE
NC BR	-950727YV	WLSE	JG & J BROADCASTING, INC. WALLACE, NC	RENEWAL OF LICENSE
NC BR	-950727YW	NKJV	ANCHOR BAPTIST BROADCASTING ASHEVILLE, NC	RENEWAL OF LICENSE
NC BR	-950727YY	WYRN	FRANKLIN BROADCASTING CO., INC. LOUISBURG, NC	RENEWAL OF LICENSE
NC BR	-950727YZ	WYLT	ALCHEMY COMMUNICATIONS LTD P/SHIP #1 RALEIGH, NC	RENEWAL OF LICENSE
NC BR	-950727ZA	WWMO	STONE BROADCASTING CORPORATION EDEN, NC	RENEWAL OF LICENSE
NC BR	-950728YE	WYFQ	BIBLE BROADCASTING NETWORK, INC. CHARLOTTE, NC	RENEWAL OF LICENSE

- OVER -

BROADCAST APPLICATIONS

FM BROADCAST STATION APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING

NC BRH	-950727YU	WRCQ	KINETIC COMMUNICATIONS INC DUNN, NC	RENEWAL OF LICENSE
SC BRH	-950718YB	WSLT	GHB OF CLEARWATER, INC. CLEARWATER, SC	RENEWAL OF LICENSE
SC BRH	-950724YJ	WSCA	VBX COMMUNICATIONS, INC. GEORGETOWN, SC	RENEWAL OF LICENSE
SC BRH	-950724YK	WGOG-FM	APPALACHIAN BROADCASTING CO., INC. WALHALLA, SC	RENEWAL OF LICENSE
SC BRH	-950724YL	WZLA-FM	SHELLEY REED ABBEVILLE, SC	RENEWAL OF LICENSE
SC BRH	-950726YO	WYKZ	TRI-CITY BROADCASTING CO., INC. BEAUFORT, SC	RENEWAL OF LICENSE

FM BROADCAST STATION APPLICATIONS FOR RENEWAL PLEADING

TX BRH	-950331YB	KEGL	EAGLE RADIO, INC. FORT WORTH, TX	RENEWAL OF LICENSE INFORMAL OBJECTION FILED 7/24/95
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FM BROADCAST STATION APPLICATIONS FOR LICENSE OR LICENSE MODIFICATION ACCEPTED FOR FILING

CA BLH	-950726KA	KDON-FM 102.5 MHZ	HENRY BROADCASTING CO. SALINAS, CA	LIC TO COVER (BPH-860813IC) FOR CHANGES
KY BLH	-950727KA	WRSL-FM 95.9 MHZ	LINCOLN-GARRARD BROADCASTING CO., INC STANFORD, KY	LIC TO COVER (BPH-941027IG) FOR CHANGES

FM BROADCAST STATION APPLICATIONS FOR LICENSE OR LICENSE MODIFICATION APPLICATION COMMENT

FL BLH	-881011KG	WYUU 92.5 MHZ	ECI LICENSE COMPANY, L. P. SAFETY HARBOR, FL	LIC TO COVER (BPH-871028MC) FOR AUXILIARY ANTENNA SYSTEM. (FOR AUXILIARY PURPOSES ONLY). LICENSE CANCELLED PER 1800B3-JDB ON 8/3/95
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CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 30th day of August, 1995, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "MOTION TO ACCEPT SUPPLEMENT TO COUNTERPROPOSAL" and "SUPPLEMENT TO COUNTERPROPOSAL" to the following:

* Mr. John A. Karousos
Chief, Allocations Branch
Mass Media Bureau
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Mr. James P. Gray, President
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Veronica Abarre

* HAND DELIVERED