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

OCT 20 1995

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In the Matter of)
)
Amendment of Section 73.202)
FM Table of Assignments)
(Utica, Hazlehurst and)
Vicksburg, Mississippi))
)

MM Docket No. 93-158

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To: Chief, Policy and Rules Division

PETITION FOR EXPEDITED ACTION
AND/OR LIFTING OF THE AUTOMATIC STAY

Green Broadcasting Company, licensee of WMDC-FM, Hazlehurst, Mississippi ("WMDC-FM"), hereby petitions for expedited action in the above proceeding or, alternatively, for the lifting of the automatic stay in order to permit WMDC-FM to implement the modifications made to its authorized frequency, pursuant to the Commission's Report and Order, 9 FCC Rcd. 6439 (1993), in the above proceeding. In support whereof the following is shown:

1. In its Report and Order, 9 FCC Rcd. 6439 (1993), in the above proceeding, the Commission substituted Channel 225A for 265C3 at Hazlehurst, Mississippi and modified WMDC-FM's license to specify operation on Channel 225A. Subsequently, on December 5, 1994, a Petition for Reconsideration was filed by Donald Brady, which, pursuant to Section 1.420(f), stayed the effect of the modification of WMDC-FM's license to specify operation on Channel 225A, pending resolution of the Petition for

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Reconsideration. On June 23, 1995, WMDC-FM submitted an Application for Construction Permit to specify a different transmitter site. By Letter dated October 3, 1995, the Assistant Chief, Audio Services Division, advised WMDC-FM that its application would be held in abeyance, pending resolution of the Petition for Reconsideration. Thus, WMDC-FM is being precluded from taking steps to improve its facilities, pending action on the Petition for Reconsideration.

2. As indicated above, the Petition for Reconsideration was filed on December 5, 1994, almost eleven months ago. Furthermore, review of the Petition for Reconsideration discloses that it is simply a reiteration of arguments previously advanced by Donald B. Brady ("Brady") in the proceeding prior to the issuance of the Report and Order and previously addressed by the Commission therein. Furthermore, as the Commission demonstrated in the Report and Order, the arguments advanced by Brady are utterly without merit and clearly and conclusively controlled by long established precedent. ___/ Accordingly, it would appear that the Commission's Staff has had more than ample time to address and

1. It is well established that the Commission will accept a late filed expression of interest only where there would be no adverse impact on any other proposal and this policy has been expressly upheld by the Court of Appeals. See: Gosnell, Arkansas, 6 FCC Rcd. 4579, 4581 at para. 12 (1991); Amor Family Broadcasting Group v FCC, 918 F. 2d 960, 963 (D.C. Cir. 1990); Santa Isabel, Puerto Rico, 4 FCC Rcd. 3412. Furthermore, the Notice incorrectly stated that competing expressions of interest would be accepted. The substitutions at Utica and Hazlehurst, Mississippi, constituted an incompatible swap, with respect to which no expression of interest could be filed. See: 9 FCC Rcd. 6439, Note 4 (1993).

act upon Brady's meritless and repetitive Petition and, therefore, should expedite action with respect to Brady's Petition for Reconsideration.

3. Alternatively, should the Commission be unable to grant the requested expedited action, WMDC-FM requests that it take immediate action to lift the automatic stay, imposed in this proceeding pursuant to Section 1.420(f). In this regard it is noted that on July 21, 1995 the Commission released a Notice of Proposed Rulemaking in MM Docket No. 95-110, proposing the amendment of Section 1.420(f) to eliminate the automatic stay provision. In so doing the Commission indicated its belief the automatic stay was contrary to the public interest and was in many instances being utilized merely for purposes of forestalling competition. Id. This appears to be precisely the case in this instance, where Brady could gain nothing from the acceptance of his untimely expression of interest other than the ability to block the upgrade proposals approved in the Report and Order. ___/

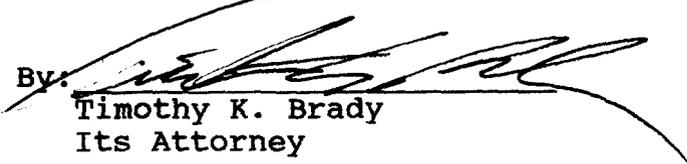
2. As has been previously been demonstrated in this proceeding, Brady's untimely expression of interest and Petition for Reconsideration raise serious questions inasmuch as there exists no equivalent channel for assignment at Utica. Thus, had Brady's untimely "expression of interest" been considered, it would only have served to "block" the proposed upgrade of WJXN-FM and the related channel substitutions, all of which will provide improved service for their respective communities. Thus, Brady would gain nothing through the consideration of his untimely "expression of interest," unless his interests would be served by simply "blocking" the proposals advanced in this proceeding. As such Brady's comments and Petition for Reconsideration can only be viewed as strike filings, designed to impede or delay the action requested by other parties to this proceeding, an entirely improper and illegal purpose. Thus, the Commission should commence an appropriate investigation to determine whether Brady's filings have any legitimate purpose, as opposed to merely "blocking" the proposals advanced in this proceeding.

Accordingly, inasmuch as the Commission has proposed to eliminate the automatic stay provision of Section 1.420(f), it would be entirely appropriate for the Commission to lift the automatic stay in this instance, especially where it is clear that the Petition for Reconsideration was filed solely for purposes of delay.

WHEREFORE, premises considered and good cause having been shown, the Commission should expedite action on the Petition for Reconsideration, filed in the above proceeding by Donald B. Brady or, alternatively, take immediate action to lift the automatic stay in this proceeding.

Respectfully Submitted,

GREEN BROADCASTING COMPANY

By: 

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Its Attorney

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October 20, 1995

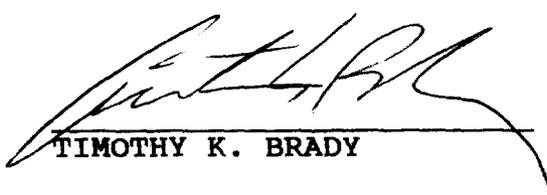
CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 20th day of October, 1995, served a copy of the foregoing Petition for Expedited Action by First Class mail, postage prepaid upon the following:

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