

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
RONALD G. LONDON *
* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI
L. L. P.
ATTORNEYS AT LAW
1776 K STREET, NORTHWEST SUITE 200
WASHINGTON, D. C. 20006
(202) 296-0600

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986
TELECOPIER (202) 296-5572
INTERNET PEPFOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

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July 12, 1996

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Amendment of Section 73.202(b) FM Table of
Allotments (Smith, Nevada)
(MM Docket No. 96-103; RM-8794)**

Dear Mr. Caton:

Transmitted herewith on behalf of Chris Kidd d/b/a Kidd Communications is an original and four copies of his reply comments in connection with the above-referenced proceeding. These reply comments are respectfully directed to the Chief, Allocations Branch.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


John F. Garziglia

Enclosure

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JUL 12 1996

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

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 96-103
Table of Allotments) RM-8794
FM Broadcast Stations)
(Smith, Nevada))

To: Chief, Allocations Branch

REPLY COMMENTS

Chris Kidd d/b/a Kidd Communications, by its attorneys, pursuant to Notice of Proposed Rule Making, DA 96-620, released May 6, 1996, hereby submits his reply comments to the above-referenced proposal to allot Channel 271C3 to Smith, Nevada.^{1/} In reply thereto, the following is submitted:

1. A review of the Commission docket records in this proceeding, MM Docket No. 96-103, does not evidence any expression of interest filed by the proponent of Channel 271C3 for Smith, Nevada as required by the Notice of Proposed Rule Making. At paragraph 2 of the Appendix to the Notice of Proposed Rule Making, it states that the proponent of a proposed allotment is expected to file comments. Further the proponent is expected to restate its present intention to apply for the channel if it is allotted, and if authorized, to build a station promptly. The Appendix at Section 2 notes that the failure to file such

^{1/} The reply comment date established in the Notice of Proposed Rule Making was July 12, 1996. Accordingly, these reply comments are timely filed.

comments may lead to a denial of the proponent's request. As shown in the document index report from the Commission's record image processing system, the only filing in this proceeding was that by Chris Kidd d/b/a Kidd Communications which advocated the allotment of Channel 268A to Truckee, California with ancillary substitutions, and the denial of the allotment of Channel 271C3 to Smith, Nevada.^{2/}

2. When the proponent of an allotment fails to file an expression of interest in response to a notice of proposed rule making, the Commission's well-settled established policy is to dismiss that proposal. Further, any expression of interest that may be filed now by the proponent would not be accepted as this is a contested proceeding. See Flora and Kings, Mississippi and Newellton, Louisiana, 7 FCC Rcd 5477 (1992) (Late filed expressions of interest not accepted in contested proceeding proposal dismissed). In Amor Family Broadcasting Group v. FCC, 918 F2d 960 (D.C. Cir. 1990), the Commission's dismissal of a late-filed expression of interest in a contested allotment proceeding was upheld by the United States Court of Appeals.

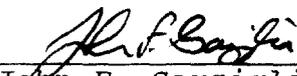
3. This proceeding is a contested proceeding as Chris Kidd d/b/a Kidd Communications has filed a counterproposal that is mutually exclusive with the proposal to allot Channel 271C3 to Smith, Nevada. As no expression of interest in favor of the allotment of Channel 271C3 to Smith Nevada was filed with the

^{2/} By Public Notice Report No. 2142, released July 11, 1996, notice of the filing of the counterproposal of Chris Kidd was given by the Commission.

Commission by the comment date established in the Notice of Proposed Rule Making, the proposal to allot Channel 271C3 to Smith, Nevada should be dismissed, and the counterproposal to allot Channel 268A to Truckee, California as a first local transmission service should be granted.

Respectfully submitted,

CHRIS KIDD
d/b/a KIDD COMMUNICATIONS

By: 
John F. Garziglia
His Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20554
(202) 296-0600

July 12, 1996

FEDERAL COMMUNICATIONS COMMISSION

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TOTAL PAGES: 2
SUBMITTED: 07/11/1996 @ 11:41:22

07/11/1996

DOCUMENT INDEX REPORT

Docket Number: 96-103
Rulemaking Number: RM-8794
Date of Filed Document: 062796
Name of Applicant/Petitioner: CHRIS KIDD D/B/A KIDD COM
Law Firm Name: PEPPER & CORAZZINI, L.L.P
Attorney/Author Name: GARZIGLIA, JOHN F.
File Number/City, St.:
Document Type: CO <COMMENT >
FCC Number/DA Number:
Release Date/Denied Date:
Receipt/Adopted/Issued Date: 062796
Exparte/Late Filed:
Viewing Status: 0 <Unrestricted>
Total Page Count: 23

Docket Number: 96-103
Rulemaking Number: RM-8794
Date of Filed Document:
Name of Applicant/Petitioner: POLICY AND RULES DIVISION
Law Firm Name: FCC
Attorney/Author Name: KAROUSOS, JOHN A.
File Number/City, St.:
Document Type: NP <NPRM >
FCC Number/DA Number: DA 96-620
Release Date/Denied Date: 050696
Receipt/Adopted/Issued Date: 042296
Exparte/Late Filed:
Viewing Status: 0 <Unrestricted>
Total Page Count: 2

Docket Number: 96-103
Rulemaking Number: RM-8794
Date of Filed Document: 040396
Name of Applicant/Petitioner: DONEGAL ENTERPRISES, INC.
Law Firm Name:
Attorney/Author Name: MULREANY, PATRICK A.
File Number/City, St.:
Document Type: PU <PET RM >
FCC Number/DA Number:
Release Date/Denied Date:
Receipt/Adopted/Issued Date: 040896
Exparte/Late Filed:
Viewing Status: 0 <Unrestricted>
Total Page Count: 10

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that true copies of the foregoing "Reply Comments" were sent this 12th day of July, 1996, by first class, postage prepaid U.S. mail, to the following:

* Leslie K. Shapiro
Allocations Branch
Federal Communications Commission
2000 M Street, N.W.
Fifth Floor
Washington, D.C. 20554

Patrick A. Mulreany
President
Donegal Enterprises, Inc.
P.O. Box 123
Smith, Nevada 89430

Olympic Broadcasters, Inc.
2339 Gold Meadow Way
Suite 111
Gold River, California 95670

Richard A. Helmick, Esquire
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573
[Counsel to Olympic Broadcasters, Inc., the
Licensee of KQNC(FM)]

Sunbelt Broadcasting Company
Radio Station KRNK-FM
1790 Vassar Street
Reno, Nevada 89502


Tracey S. Westbrook

* Via hand delivery