

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Cadiz and Oak Grove, Kentucky))

MM Docket No. 93-314
RM-8396

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OPPOSITION TO APPLICATION FOR REVIEW

1. Ham Broadcasting Co., Inc. ("Ham") hereby opposes the Application for Review in the above-captioned proceeding filed by Southern Broadcasting Corporation ("Southern") on July 8, 1996. Ham is the licensee of WKDZ-FM, Cadiz, Kentucky, and is the proponent in RM-8396, seeking to move upgrade WKDZ-FM to Class C3 status, with a change of community of license from Cadiz to Oak Grove.

2. In its Application for Review, Southern argues that the Mass Media Bureau's ("Bureau") *Report and Order*^{1/} and *Memorandum and Order*^{2/} below did not sufficiently consider the "interrelationship between a 'specified community' to the larger metropolitan area as a whole," and instead placed far too much weight on the "central city" in the Clarksville,

^{1/} DA 95-1993, released September 25, 1995 (by the Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau).

^{2/} DA 96-878, released June 7, 1996, by the Chief, Policy and Rules Division, Mass Media Bureau.

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Tennessee-Kentucky Urbanized Area, which is Clarksville itself.^{3/} What Southern appears to be arguing is that if it was unable beforehand to demonstrate that Oak Grove is not sufficiently independent from Clarksville to warrant a first local transmission service preference, it should now be permitted to advance the position that the Commission should still deny a first local transmission service preference because of Oak Grove's ties to Fort Campbell, Kentucky. Fort Campbell is a military installation that is also theoretically located within the Clarksville Urbanized Area, although, like Oak Grove, it is at a considerable distance from Clarksville and is in a different state. Southern's attempt to shift the direction of its horse in midstream comes much too late to be considered in this proceeding; and even if it is considered, it has no merit as a basis for reversing the meritorious Bureau decision to allot Channel 293C3 to Oak Grove.

3. The Bureau's decision was carefully reasoned in accordance with sound Commission precedent and should not be reviewed. Southern has not demonstrated any relevant error of fact or law and has presented no fact that was not before the Bureau when the *Report and Order* and *Memorandum Opinion and Order* were written. Rather, Southern has merely reargued the points made in its earlier pleadings and has stated that the Commission should reach the opposite conclusion. The Commission has repeatedly stated that "reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken."^{4/} For similar

^{3/} Application for Review at p. 6.

^{4/} See, e.g., *Lanser Broadcasting Group*, 10 FCC Rcd 12121(1995); and *Omaha Great Empire Broadcasting, Inc.*, 10 FCC Rcd (1995), both citing *Isis Broadcast Group*, 8 FCC Rcd 24 (Rev. Bd. 1992).

reasons, review should not be granted when the matters at hand have already been carefully and properly analyzed by the Bureau.

4. On the merits, Southern's reargument that Oak Grove is not a separate community establishes, if anything at all, only that Oak Grove has a close *economic* relationship with the military installation at *Fort Campbell, Kentucky*. But Southern has not shown that Oak Grove's relationship with *Clarksville, Tennessee*, is of such a nature as to warrant a Commission finding of interdependence between the two cities, and thus, with respect to Oak Grove and the Clarksville Urbanized Area as a whole. Oak Grove's economic ties to the military base at Fort Campbell, whatever they may be,^{5/} do not establish that Oak Grove is not a separate community from Clarksville or deserving of a Section 307(b) first local transmission service preference. According to sound Commission precedent, the relevant issue in this case is whether Oak Grove is independent from the "central city" in the Urbanized Area, which is Clarksville.^{6/} Southern may not randomly pick a community within the Urbanized Area for which it can best demonstrate an economic relationship with Oak Grove and then hope to prevail; instead, it must prove interdependence between Oak Grove and the central city in the Urbanized Area -- Clarksville --

^{5/} As noted above, the relationship between Oak Grove and Fort Campbell is not the issue in this proceeding. In any event, both parties agreed in earlier pleadings that most of the residents of Oak Grove find employment at Fort Campbell, as might be expected given the employment-intensive nature of a large, nearby military base.

^{6/} Southern itself has acknowledged on page 4 of its Application for Review that the Commission specifically used the term "central city" in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990), and in *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988), to describe the particular part of an urbanized area that should be considered when determining the interdependence of one community as compared to another. However, Southern goes too far in stretching the Commission's earlier decisions to cover a situation like the one here, where Oak Grove may have a close economic relationship with Fort Campbell, but not with Clarksville, the central city in the urbanized area.

which it has failed to do. The Bureau's analysis of this point was thorough and well-reasoned and should not be overturned.

5. Nor is Southern's complaint that the Bureau did not adequately analyze the factors in *Faye and Richard Tuck*^{7/} a valid one. As in its Petition for Reconsideration, Southern does not point to any element of *Tuck* that the Bureau ignored; it argues only that the Bureau should have reached a different conclusion. The Commission's job, however, is to uphold the public interest; and the Bureau has considerable expertise in *Tuck* analyses which it brought to bear in the instant proceeding. Furthermore, the Commission should not allow itself to be swayed by the unfounded position of an entity which owns three of the major stations in the Clarksville Urbanized Area, as the views of such an entity must out of simple human nature be colored by private economic motives.^{8/}

6. Once again, Southern ignores the critical benefit noted by the Bureau, that the result of this proceeding will be a more efficient use of the spectrum by means of an upgrade for WKDZ-FM that cannot be achieved if the station remains licensed to Cadiz. The net gain of service to 2,889 square kilometers inhabited by 159 881 persons^{9/} cannot be ignored.

^{7/} Cited at Note 4, *supra*.

^{8/} Southern owns WABD(AM) and WCVQ(FM), the only two stations licensed to Fort Campbell, and acquired WDXN(AM), one of the three AM stations licensed to Clarksville, in 1995 (File No. BAL-950621EH). There are no commercial FM stations licensed to Clarksville and no stations at all licensed to any community in the Urbanized Area other than Fort Campbell and Clarksville.

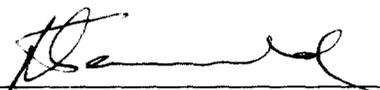
^{9/} *Report and Order* at par. 17.

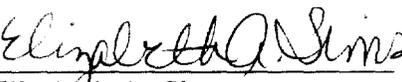
7. Moreover, Southern's arguments in this case are further weakened by the fact that two of the principal cases cited in the Application for Review have recently been overruled.^{10/} Although Southern has since supplemented its Application for Review quickly to provide other cases which might support its argument, it is clear that the Bureau's decisions in this proceeding have been consistent with current interpretations of Section 307(b) and should be upheld.

8. In sum, the Bureau's analysis was careful and well-reasoned and took into consideration the arguments of both sides. Southern has shown no error that warrants review but has only reargued the positions already taken into account and properly rejected, or improperly shifted its petition in a manner that has no merit, either procedural or substantive. Accordingly, the Application for Review should be denied.

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Respectfully submitted,


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July 22, 1996

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^{10/} *Van Wert, Ohio and Monroeville, Indiana*, 7 FCC Rcd 6519 (MM Bur., 1992) and *Fredericksburg and Helotes, Texas*, 10 FCC Rcd 6580 (MM Bur., 1995), reversed by *Memorandum Opinion and Order*, MM Docket No. 94-125, DA 96-1004 (MM Bur., released July 5, 1996).

CERTIFICATE OF SERVICE

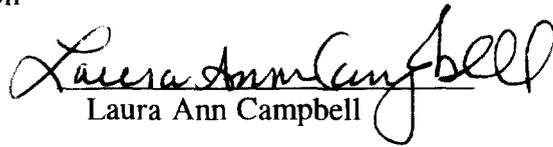
I, Laura Ann Campbell, do hereby certify that I have, this 22nd day of July, 1996, caused to be sent by first class United States mail, postage prepaid. copies of the foregoing "Opposition to Application for Review" to the following:

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