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

AUG 12 1996

In the Matter of	)	FEDERAL COMMUNICATIONS COMMISSION
	)	OFFICE OF SECRETARY
Amendment of Section 73.202(b),	)	MM Docket No. 96-7
Table of Allotments,	)	
FM Broadcast Stations	)	
(Banks, Redmond, and <u>Corvallis</u> , <sup>1</sup> Oregon)	)	<u>RM-8732</u>
	)	
and	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-12
Table of Allotments,	)	
FM Broadcast Stations	)	
(The Dalles and <u>Corvallis</u> , <sup>2</sup> Oregon)	)	RM-8741
To: Chief, Allocations Branch		
Mass Media Bureau		

**OPPOSITION TO MOTION TO STRIKE**  
**and**  
**COMMENTS IN SUPPORT OF SUPPLEMENT**

**AMERICAN RADIO SYSTEMS LICENSE CORP. ("ARS")**, licensee of Station KDBX(FM), Banks, Oregon<sup>3</sup>, and **COMBINED COMMUNICATIONS, INC. ("CCI")**, licensee of Station KLRR(FM), Redmond, Oregon (together, the "Joint Proponents"), by their attorneys, hereby support the July 15, 1996 "Supplement to Comments of LifeTalk Broadcasting Association" ("Supplement"), filed by LifeTalk Broadcasting Association ("LifeTalk"), the Petitioner in MM Docket No. 96-12, and oppose the July 24, 1996 "Motion to Strike," filed by

<sup>1</sup> The community of Corvallis, Oregon has been added to the caption.

<sup>2</sup> The community of Corvallis, Oregon has been added to the caption.

<sup>3</sup> On July 25, 1996, Common Ground Broadcasting, Inc. ("Common Ground") and ARS consummated the assignment of license of KDBX(FM) (see File No. BALH-960412GS). Accordingly, ARS, as successor-in-interest to Common Ground and licensee of KDBX(FM), hereby substitutes itself for Common Ground in this proceeding.

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Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon, a counterproponent in Dockets 96-7 and 96-12. In support whereof, the Joint Proponents show the following:

1. On the July 5, 1996 filing deadline in the two subject proceedings, LifeTalk duly filed "Reply Comments" reiterating its commitment in Docket 96-12 "to file an application for Channel \*268C3 if allotted to The Dalles" (Reply Comments at 3). Ten days later, LifeTalk filed a Supplement to its original April 5, 1996 "Comments" in Docket 96-12, which Supplement also relates to LifeTalk's July 5 Reply Comments. The sole purpose of that Supplement is to "clarify LifeTalk's previously stated intentions" to the effect that "if the proposed allotment to The Dalles is adopted, it will submit an application for a facility which is capable of providing city-grade coverage to The Dalles, including placement of the antenna at a sufficient height to accomplish the coverage required by the Commission's rules and/or precedents" (Supplement at 1, 3).

2. MBI has filed a Motion to Strike ("Motion") LifeTalk's Supplement and dismiss LifeTalk's rulemaking proposal on the ground (Motion at 2) that LifeTalk allegedly did not, "in a timely manner," make "the explicit pledge" concerning erection of a higher tower which the Commission requested in the Notice of Proposed Rulemaking ("NPRM") in Docket 96-12, 11 FCC Rcd 1788 ¶3 (Mass Media Bur. 1986). The Joint Proponents oppose MBI's Motion and urge that the Commission should accept the Supplement as timely and to provide a complete record for decision in Docket 96-12.

3. It is well established that the Commission will accept supplements to pleadings in allotment proceedings to "enable us to resolve this proceeding on the basis of a complete record". See FM Table of Allotments (West Palm Beach FL), 6 FCC Rcd 6975 n.1 (Mass Media Bur. 1991). It is equally clear that the Commission will dismiss rulemaking proposals where an "omission" has been made in the proposal, the Commission has requested that the omission be cured, and "[n]o attempt has been made to rectify this omission". See FM Table of Allotments (Remington and Falmouth VA), 8 FCC Rcd 6627 ¶3 (Mass Media Bur. 1993). Finally, the Commission has held that it will deny a motion to strike, where, as here, the comments being attacked integrally relate to the counterproposal under consideration. See FM Table of Allotments (Rocky Mount, Bassett and Stanleytown VA), 10 FCC Rcd 9285 n.4 (Mass Media Bur. 1995).

4. Applying these legal principles to the instant case, the Joint Proponents urge that: (a) consideration of the Supplement is necessary to provide a complete record in this proceeding concerning LifeTalk's willingness to construct the requisite higher tower if an allotment is made to The Dalles (West Palm Beach FL, supra); (b) LifeTalk's Supplement is timely as a clarifying supplement to its previous filings, and its efforts to rectify its omission, as specifically requested by the Commission, should not be permitted to be thwarted by its opponent (MBI) (Remington VA, supra); and (c) MBI's Motion should be denied because LifeTalk's proposal is mutually exclusive with MBI's counterproposal, and, therefore, LifeTalk's clarification of its Comments and Reply Comments is fully germane to an analysis of MBI's counterproposal (Rocky Mount NC, supra).

5. In addition, the Joint Proponents note that on March 27, 1996, the Planning and Economic Development Office of Wasco County, Oregon filed a letter with the Commission in Docket 96-12 (Exhibit A hereto), which fully supports grant of LifeTalk's proposal. Most importantly, the Planning Office describes LifeTalk's proposal as a "petition...to construct a 686 [foot] tall antenna tower" (emphasis added). LifeTalk's original petition did not specify that higher height -- only the NPRM did (at ¶3). Thus, it is reasonable to infer that LifeTalk spoke to the Planning Office about the 686-foot requirement, and the Planning Office's letter should be viewed as the Planning Office's endorsement of LifeTalk's amended proposal. When the Planning Office's letter is combined with LifeTalk's original statement in its April 5, 1996 Comments (at 1) that "LifeTalk supports the Commission's proposal," the Joint Proponents submit that, together, these documents demonstrate substantial compliance with the NPRM's request (at ¶3) that "petitioner...affirmatively state that it would apply for and construct a station with the necessary higher tower". LifeTalk's Supplement merely provides a further clarification of its intent in order to perfect the record in Docket 96-12 and remove all doubt.

6. In sum, the Joint Proponents urge that there are no magic words which are necessary to meet the NPRM's requirement for an "affirmative statement". The purpose of the requirement was not to trip up LifeTalk, but, rather, to alert LifeTalk to a special construction requirement and to obtain LifeTalk's assent. The Joint Proponents submit that, even without LifeTalk's Supplement, the record demonstrates LifeTalk's assent and compliance with the NPRM's request. However, the Supplement abundantly clarifies the matter, and the paramount public interest warrants that it be considered in order to provide a complete record in this proceeding. MBI's objections are extremely formalistic, hypertechnical, and self-serving.

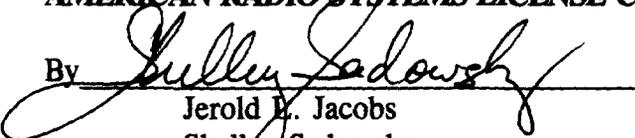
Acceptance and consideration of LifeTalk's Supplement is consistent with the above-cited Commission precedent and the requirements of administrative due process.

WHEREFORE, in view of the foregoing, ARS and CCI respectfully ask the Commission to accept and consider LifeTalk's Supplement and deny MBI's motion to strike.

Respectfully submitted,

**AMERICAN RADIO SYSTEMS LICENSE CORP.**

By

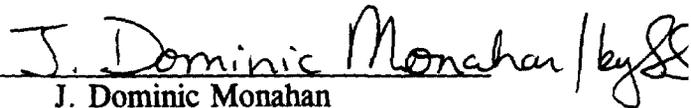
  
Jerold L. Jacobs  
Shelley Sadowsky

ROSENMAN & COLIN LLP  
1300 19th Street, NW  
Suite 200  
Washington, DC 20036  
(202) 463-4640

Its Attorneys

**COMBINED COMMUNICATIONS, INC.**

By

  
J. Dominic Monahan

LUVAAS, COBB, RICHARDS & FRASER  
777 High Street  
Suite 300  
Eugene, OR 97401  
(541) 484-9292

Dated: August 12, 1996

**PLANNING AND ECONOMIC DEVELOPMENT OFFICE  
WASCO COUNTY**

2708 EAST SECOND STREET THE DALLES, OREGON 97068

KIMBERLY J. JACOBSEN, Director

PHONE: (503) 298-8100

FAX: (503) 298-3901

March 27, 1996

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Federal Communications Commission  
Washington, D.C. 20554

**SUBJECT: 47 CFR Part 73 [MM Docket No. 96-12; RM-8741]: Radio Broadcasting Services; The Dalles, Oregon**

Dear Sir:

Thank you for the opportunity to comment on the petition filed by LifeTalk Broadcasting Association to construct a 606 tall antenna tower to provide The Dalles with its fourth local FM, and first local noncommercial educational service.

Based on the latitude and longitude coordinates provided in the notice, it appears the new tower will be erected on property described as Township 1 North, Range 14 East Willamette Meridian (W.M.), Section 31. This entire section is zoned Exclusive Farm Use "A-1(80)". Oregon Administrative Rule (OAR) 660-33-130(5) permits transmission towers over 200 feet in height, upon finding that the request complies with the following:

- The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- The use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

In order to construct the antenna tower, the applicant must apply for, and receive approval of a Site Plan Review, through the Wasco County Planning & Development Office.

Again, thank you for the opportunity to comment on this request.

Sincerely,

*Dawn M. Beard*

Dawn M. Beard  
Associate Planner

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c Kimberly J. Jacobson, Director of Planning & Development  
Rudy H. Dolinsky, Vice-President for Technical Development, LifeTalk Broadcasting Assn., 402 E Yakima Avenue, Suite 1320, Yakima, WA 98901

**CERTIFICATE OF SERVICE**

I, Maria Alvarez-Newsom, do hereby certify that on this 12th day of August, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing "OPPOSITION TO MOTION TO STRIKE and COMMENTS IN SUPPORT OF SUPPLEMENT" to the following:

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 554  
Washington, D.C. 20554

Andrew J. Rhodes, Esq.\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 554  
Washington, D.C. 20554

Ms. Leslie K. Shapiro\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 564  
Washington, D.C. 20554

James P. Riley, Esq.  
Anne Goodwin Crump, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Rosslyn, VA 22209  
**COUNSEL FOR COMMON GROUND BROADCASTING, INC.**

J. Dominic Monahan, Esq.  
Luvaas Cobb Richards & Fraser, P.C.  
777 High Street  
Suite 300  
Eugene, OR 97401  
**COUNSEL FOR COMBINED COMMUNICATIONS, INC.**

Roger J. Metzler, Esq.  
Keck, Mahin & Cate  
One Maritime Plaza  
23rd Floor  
San Francisco, CA 94111-3577  
**COUNSEL FOR HURRICANE COMMUNICATIONS, INC.**

Donald E. Martin, Esq.  
Donald E. Martin, P.C.  
P. O. Box 19351  
Washington, D.C. 20036

**COUNSEL FOR LIFETALK BROADCASTING ASSOCIATION**

Matthew H. McCormick, Esq.  
Reddy, Begley & McCormick  
1001 22nd Street, N.W.  
Suite 350  
Washington, D.C. 20037-1803

**COUNSEL FOR MADGEKAL BROADCASTING, INC.**

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Maria Alvarez-Newson

**\*BY HAND**