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Federal Communications Commission
Office of Secretary

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BY HAND DELIVERY

November 25, 1996

William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Docket No. 96-204
Martin, Tiptonville and Trenton, TN
Attn: John A. Karousos
Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

Dear Mr. Karousos:

Enclosed for filing is an original plus four copies of "Comments and Counterproposal" on behalf of the Petitioner, Thunderbolt Broadcasting Company, in the above-referenced Rule Making proceeding.

Please date-stamp and return the attached "File Copy" of this transmittal letter.

Sincerely,



Robert Lewis Thompson

Enclosures

cc: Paul F. Tinkle (WCMT Local Public File)
Eric Kravetz, Esq.

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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of)	MM Docket No. 96-204
)	RM-8876
Amendment of Section 73.202(b))	
Table of Allotments)	
FM Broadcast Stations)	
(Martin, Tiptonville,)	
and Trenton, TN))	

To: John A. Karousos, Chief
Allocations Branch

COMMENTS AND COUNTERPROPOSAL OF PETITIONER

Petitioner Thunderbolt Broadcasting Company ("TBC") hereby submits these "Comments and Counterproposal" in response to both the "Notice of Proposed Rule Making," DA 96-1627, released October 4, 1996 ("NPRM"), and the "Statement of Interest," filed by Twin States Broadcasting, Inc. ("Twin States") on or about October 15, 1996. ^{1/}

Background

On September 5, 1996 Petitioner TBC filed a Petition for Rule Making in which it proposed, pursuant to 47 CFR 1.401 of the FCC's rules, to substitute FM channel 267C3 for channel 269A at

^{1/} Twin States's "Statement of Interest" was served on John F. Garziglia, Esquire, who withdrew recently as Petitioner's counsel.

Martin, TN, and to modify the license of WCMT (FM) at Martin to specify operation on channel 267C3. ^{2/}

By the above-cited NPRM, the FCC proposes to grant TBC's Petition in order to enable WCMT (FM) to improve its service to the public. See NPRM at para. 3. The NPRM noted, however, that the proposal was subject to possible dismissal should an "expression of interest" in the vacant Tiptonville allotment be filed by the Comment deadline in this proceeding. Indeed, a "Statement of Interest" was filed on or about October 15, 1996, by Twin States, licensee of WWUC (FM) and WKWT (FM), Union City, TN.

COUNTERPROPOSAL

1. Summary. Notwithstanding the expression of interest in the vacant channel 267C3 allotment at Tiptonville, an alternate FM channel is available for allotment to Tiptonville (channel 247A), by merely substituting channel 249C3 for channel 248C3 at licensed station WWEZ (FM)'s current Trenton, TN site. Channel 247A is an equivalent substitution for vacant channel 267C3 at Tiptonville and, in any event, the public interest in this proceeding favors the allocation of a C3 channel to Martin, TN.

^{2/} TBC's Petition noted that channel 267C3 could be allocated to Martin, TN, with a site restriction 14 kilometers northwest of the center of Martin, TN.

1. ALLOCATION OF CHANNEL 247A TO TIPTONVILLE

2. The recent expression of interest by Twin States in maintaining an FM allocation at Tiptonville should not dissuade the FCC from deleting the vacant channel 267C3 allotment at Tiptonville and allocating it to Martin, TN, as the NPRM proposes. Should the FCC allocate channel 247A to Tiptonville, TBC hereby expresses its intention to apply for that channel and, if authorized, construct that new FM station on channel 247A at Tiptonville.

3. In order to effectuate the allocation of channel 247A to Tiptonville, the FCC should substitute channel 249C3 for channel 248C3 at WWEZ's licensed site at Trenton and specify WWEZ's operation on that channel. ^{3/} Such a substitution at Trenton would meet all applicable separation requirements with respect to both existing and proposed stations and allotments. See Technical Report at Exhibit E-2, attached hereto as Appendix A. Such a change easily can be accomplished by the Trenton licensee at its current site. Id. at 1. Such a substitution at Trenton would accommodate the allocation of channel 247A to Tiptonville. ^{4/}

^{3/} Should the Petitioner become the licensee of channel 267C3 at Martin, TN, it will negotiate with the licensee of WWEZ (FM), Trenton, TN, for reimbursement of any reasonable costs associated with the change in WWEZ's frequency. See Circleville, Ohio, 8 FCC 2d 159 (1967).

^{4/} Petitioner's proposal for a lower class allotment at Tiptonville does not constitute a counterproposal because it does not introduce a new community or propose a higher class allotment than proposed in the NPRM. See Clinton, Saint Pauls, and Southern Pines, NC and Chesterfield, SC, DA 91-845, at 3, released July 16, 1991.

Petitioner's Technial Report confirms that a channel 247A allotment at Tiptonville would meet all allocation requirements. Id. at Exhibit E-1. ^{5/}

II. THE GREATER NEED FOR CHANNEL 267C3 AT MARTIN

4. Allocating channel 247A to Tiptonville, TN and channel 267C3 to Martin, TN is in the public interest. It long has been settled that a community has no "right" to a particular FM channel; ^{6/} moreover, the FCC regularly substitutes a lesser class channel for a requested higher class channel, provided that interest is expressed in the lesser class channel. ^{7/} Petitioner's proposed substitution of channel 247A for channel 267C3 at Tiptonville and the allocation of channel 267C3 to Martin would result in a preferential arrangement of FM allotments under the Commission's policies because it would provide Tiptonville with a "first local aural service" while providing the larger, faster growing community of Martin, TN, with the ability to expand its existing service to a significantly greater population.

5. First, an exhaustive allocations study revealed to Petitioner that the proposed upgrade of WCMT's licensed operation

^{5/} The allocation should be made with a site restriction 3.1 kilometers south of Tiptonville. See Appendix A at 1.

^{6/} See, e.g., Odessa and Los Ybanez, TX, DA 95-395, at 1, released March 10, 1995.

^{7/} Cf. Perry, Cross City, Holiday, Avon Park, Sarasota and Live Oak, FL and Thomasville, GA, DA 96-478, at 1, released April 16, 1996 (FCC may allot a different channel than was requested for any of the communities listed in the NPRM).

at Martin, TN, can be accomplished only by deleting channel 267C3 at Tiptonville and allocating it to Martin. Id. It is well settled that the FCC strongly favors a licensee's maximization of its existing service to the public, particularly where it will serve a significantly larger population.

6. Second, substituting a channel 247A allotment for the vacant channel 267C3 allotment at Tiptonville would not cause any disruption to an existing service on which the public has come to rely. ^{8/} As the NPRM noted, a construction permit previously issued for channel 267C3 at Tiptonville was cancelled and the call sign [WAAT (FM)] was deleted. ^{9/}

7. Third, the allocation of channel 247A to Tiptonville will provide a first local aural service to Tiptonville, which already receives at least 60 dBu service from at least five (5) FM stations. Id. at Exhibit E-3.

8. Fourth, the allocation of the upgraded (C3) channel to Martin, TN would result in a dramatic increase in the population served by Petitioner's existing station, WCMT. A population gain analysis reveals that the allocation of channel 267C3 to Martin would achieve a 46% increase in population served by WCMT (FM). Id. at 2, paragraph II. Nearly 30,000 listeners would gain at least a 60 dBu service from WCMT's upgraded facility. Id.

^{8/} Cf. Sanibel and San Carlos Park, AZ, 10 FCC Rcd 7215 (1995).

^{9/} The permittee of WAAT notified the FCC, by letter dated August 22, 1996, that it would not appeal the cancellation of its CP.

9. Fifth, the allocation of the higher class (C3) facility to Martin, TN -- rather than Tiptonville, TN -- would provide an upgraded FM service to the larger of the two communities and the more populous of those two communities's respective counties. The city of Martin, TN, has over four times the population of Tiptonville (1990 Census: 9,246 for Martin; 2,149 for Tiptonville). Weakley County, in which Martin is the largest community, has over four times the population of Lake County, in which Tiptonville is one of only two sizeable towns. ^{10/}

10. Sixth, the allocation of a higher class (C3) facility to Martin, TN would provide an upgraded FM service to an established station and a community that is more deserving of an upgraded FM service. Martin is home to a significant branch of the prestigious University of Tennessee. See Sworn Declaration, attached hereto as Appendix B. The enrollment at UT Martin has increased nearly 20% since 1988, currently standing at 5,746. Id. Unlike Tiptonville, the city of Martin has a large general hospital, six major industrial plants, 350 businesses (including three banks) and is nearing completion of a \$7.5 million regional park complex. Id. The largely rural town of Tiptonville, TN, has no general hospital, fewer industries and many fewer businesses than Martin, TN. Id. While Tiptonville is deserving of a Class A FM allotment, Martin [and Weakley County] is more deserving of a C3 FM allotment.

^{10/} Weakley County has five communities with a population of 1,000 or more (including Dresden, which had a 1990 Census population of 2,749-- larger than Tiptonville).

11. Finally, the proposed 267C3 facility at Martin would entirely encompass WCMT's existing 269A service area (60dBu). See Appendix A at 2. Thus, a grant of Petitioner's proposal would not result in any loss of area or population currently being served by WCMT (FM) at Martin.

12. In sum, the public interest is best served by allocating channel 247A to Tiptonville, TN, deleting channel 267C3 at Tiptonville and allotting channel 267C3 to Martin, TN. ^{11/}

COMMENT

13. For the foregoing reasons, the FCC should amend Section 73.202(b) of its rules as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Martin, TN	269A	267C3
Tiptonville, TN	267C3	247A
Trenton, TN	248C3	249C3

^{11/} See, e.g., Americus, GA, DA 91-159, released February 15, 1991 (lower class channel substituted for higher class channel).

14. Should the FCC amend its rules by allocating both channel 267C3 to Martin, TN, and also channel 247A to Tiptonville, Petitioner TBC intends to (a) apply for a modification of WCMT FM's authority to operate on upgraded channel 267C3 and, after a permit is issued, promptly to construct the upgraded facility and (b) apply for and, after authorized, promptly to construct channel 247A at Tiptonville, TN.

Respectfully submitted,



Robert Lewis Thompson
TAYLOR THIEMANN & AIKEN, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400

Counsel for TBC

November 25, 1996

TECHNICAL REPORT

This technical report has been developed on behalf of Thunderbolt Broadcasting Company (Thunderbolt), licensee of WCMT-FM at Martin, TN, in support of comments and a counterproposal in response to the Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96-204. The NPRM proposes an adjacent channel upgrade of WCMT-FM's licensed operation on 269A (BLH-890919KA) to channel 267C3 by deleting the vacant allotment on 267C3 at Tiptonville, TN. However, in that notice, the Commission noted that an expression of interest in the Tiptonville, TN allotment may result in the dismissal of Thunderbolt's upgrade proposal. Such an expression of interest has been filed by Twin States Broadcasting, licensee of station WKWT(FM) at Union City, TN.

I. Counterproposal to Substitute Channel 247A for 267C3 at Tiptonville

Thunderbolt has performed an exhaustive allocations study for the community of Tiptonville, TN, and has determined that channel 247A may be assigned at Tiptonville in lieu of channel 267C3 to retain a first aural service there by a simple substitution of 249C3 for 248C3 at the WWEZ, Trenton, TN, licensed site. This single channel shift will be relatively simple to implement, and will not result in a significant disruption in service to station WWEZ's service area.

Exhibit E-1 demonstrates that 247A may be assigned to Tiptonville at a site 3.1 km south of the community at coordinates: N 36-21-03 W 89-28-11 in full compliance with Section 73.207 separation requirements. E-1 also demonstrates that the proposed

247A allocation will provide a 70 dBu over the entire community. Exhibit E-2 demonstrates that a simple substitution of 249C3 for 248C3 at WWEZ's licensed site will fully meet Section 73.207 separation requirements.

II. Population and Service Gain

The proposed upgrade of WCMT-FM as proposed in MM Docket No. 96-204 will result in a gain in 60 dBu service area of 2,315 square km (+94%), and a gain in 60 dBu population served of 27,737 (+45.6%). The 267C3 facility, based on an assumed 39 km uniform 60 dBu contour, would serve an area of 4,778 square kilometers with a population of 88,526. It is also noted that the proposed 267C3 60 dBu will entirely encompass the existing WCMT-FM 269A 60 dBu. Therefore, there will be no loss in service area or population. Population data were obtained utilizing the V-Soft COUNTPOP program which is based on the 1990 Census data.

III. Existing Tiptonville Services

With the assignment of channel 247A as proposed herein, Tiptonville, TN would retain a first aural service. However, Exhibit E-3 shows that the Community of Tiptonville presently receives five 60 dBu reception services from stations KHLS-FM at Blytheville, AR (242C1), KTOM at Kennett, MO (255C), WASL, Dyersburg, TN (261C2), KLOW, Caruthersville, MO (286A), and KMIS, New Madrid, MO (293C2). Stations WASL and KMIS place 70 dBu contours over Tiptonville. This analysis utilized maximum facilities for Class A, C3, C2, and C1 in accordance with the Commission's

procedures for evaluating existing reception services in allocation matters.

SUMMARY OF PROPOSAL

Community	Present	Proposed	Coordinates
Martin, TN	269A	267C3	N 36-29-09 W 88-57-30 (14.1 km northwest)
Tiptonville, TN	267C3	247A	N 36-21-03 W 89-28-11 (3.1 km south)
Trenton, TN	248C3	249C3	WWEZ SITE

Conclusion

It is concluded that the upgrade of WCMT-FM at Martin, TN will result in an increase in 60 dBu service area of 2,315 square kilometers (+94 %) and an increase of 27,737 (+45.6%) in population served. Furthermore, a first aural service may be maintained at Tiptonville, TN through the assignment of 247A and the simultaneous substitution of 249C3 for 248C3 at the licensed site of WWEZ. It is also noted that Tiptonville currently receives at least five 60 dBu reception services even without the assignment and activation of 247A there.

CHARLES M. ANDERSON
BROADCAST CONSULTANT

EXHIBIT E-2

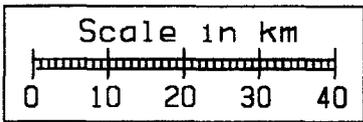
REFERENCE
36 05 10 N
88 54 39 W

CLASS = C3
Current Spacings

DISPLAY DATES
DATA 11-01-96
SEARCH 11-08-96

----- Channel 249 - 97.7 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
WWEZ	LI 248C3	Trenton TN	0.00	0.0	99.0	-99.00
ALOPEN	AL 250C2	Sikeston MO	120.52	326.8	117.0	3.52
KBXB.A	AP 250C2	Sikeston MO	120.78	327.2	117.0	3.78
ALOPEN	AL 252C1	Metropolis IL	82.64	26.3	76.0	6.64
WRIKFM	AP 252C1	Metropolis IL	82.64	26.3	76.0	6.64
WSIXFM	LI 250C	Nashville TN	187.49	90.7	176.0	11.49
KBXB	LI 250C3	Sikeston MO	120.78	327.2	99.0	21.78
WRJB	LI 252A	Camden TN	72.87	92.3	42.0	30.87
WRIKFM	CP 252C2	Metropolis IL	96.47	16.8	56.0	40.47
WQUL.C	CP 249A	West Frankfort IL	185.12	359.4	142.0	43.12
WKJQFM	LI 247A	Parsons TN	85.75	123.3	42.0	43.75
WHRZ	LI 249A	Providence KY	189.74	38.5	142.0	47.74
WSRRFM	LI 251C1	Millington TN	131.86	220.1	76.0	55.86
WQUL	LI 249A	West Frankfort IL	199.58	359.5	142.0	57.58
WSHK	LI 249A	Russellville AL	199.68	145.7	142.0	57.68
ALOPEN	AL 248A	Hopkinsville KY	149.59	58.9	89.0	60.59
KOEA	LI 248C2	Doniphan MO	180.21	288.7	117.0	63.21
WHRK	LI 246C1	Memphis TN	140.26	227.1	76.0	64.26
WWMS	LI 248C1	Oxford MS	213.96	186.0	144.0	69.96
KABKFM	LI 249C2	Augusta AR	249.09	252.4	177.0	72.09



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INTERCHK

90.5
+ 37

90
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9

+ KMISFM

Tiptonville

+ KLOW

+ KTMD

+ WASL.C

90.5
+ 36

90
+ 36

89.5
+ 36

89
+ 36

88.5
+ 36

88
+

BLYTHEVILLE

JONESBORO

EXHIBIT E-3

267C3 - .001kW

242C1 - 100kW

CERTIFICATION

Charles M. Anderson hereby certifies that;

His qualifications in broadcast allocation matters are a matter of record before the Federal Communications Commission having been presented and accepted on many occasions in the past;

That he holds a lifetime General Radiotelephone license (#PG-6-7352) , a bachelors degree in the physical sciences from Western Kentucky University, and advanced degrees from the University of North Carolina and Indiana University;

That the accompanying technical report and exhibits were developed by him personally or under his immediate supervision and that all the information presented therein is true and correct to the best of his knowledge and belief.

Is/ 
Charles M. Anderson

November 21, 1996

Disclaimer: Charles M. Anderson assumes no liability for any errors or omissions in the information, exhibits and report provided herein; and, shall not be liable for any injuries or damages (including consequential) which might result from use of said information, exhibits and report. Filing of this report with the Federal Communications Commission constitutes acceptance in full of the terms and conditions stated above.

Copyright (c) 1996, Charles M. Anderson.

SWORN DECLARATION

Paul Freeman Tinkle, being duly sworn, does state that:

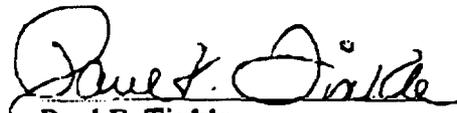
1. My name is Paul F. Tinkle. I am a resident of Martin, Tennessee and have been so since 1981. I am the General Manager of radio station WCMT (FM), Martin, Tennessee.

2. I have provided certain demographic information about Martin, Tn. (and Weakley County, Tn) as well as Tiptonville, Tn (and Lake County, Tn) for the attached "Comments and Counterproposal" of Thunderbolt Broadcasting Company.

3. Martin, Tennessee, is home to a significant branch of the prestigious University of Tennessee. The enrollment at The University of Tennessee at Martin has increased nearly 20% since 1988, currently standing at 5,746. Unlike, Tiptonville, the city of Martin has a large general hospital, six major industrial plants, 360 business licenses including three full service banks and has under construction a \$7.5 million dollar regional park complex.

4. The largely rural town of Tiptonville, Tn. has no general hospital, 2 industries and 67 business licenses.

I affirm under penalty of perjury that the forgoing is true and correct to the best of my information and belief.


Paul F. Tinkle

November 22, 1996

CERTIFICATE OF SERVICE

I, Robert L. Thompson, do certify that on this 25th day of November, 1996, I served copies of the foregoing "Comments and Counterproposal" to parties of record listed below by first class mail:

Eric Kravetz, Esq.
Brown et al
1920 N Street, NW
Suite 660
Washington, DC 20036

Station WWEZ
Box 500
Trenton, TN 38382


Robert L. Thompson

November 25, 1996