

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 PEPCOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

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 *
MICHAEL H. SHACTER
* NOT ADMITTED IN D.C.

December 9, 1996

RECEIVED

DEC 9 1996

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

Federal Communications Commission
Office of Secretary

Re: Amendment of Section 73.202(b) FM Table of
Allotments (Martin, Tiptonville
and Trenton, Tennessee)
MM Docket No. 96-204; RM-8876

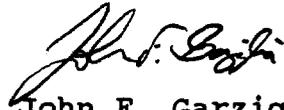
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith on behalf of Thunderbolt Broadcasting Co., the licensee of WCMT-FM, Martin, Tennessee, is an original and four copies of its reply comments seeking the institution of a rule making proceeding to substitute Channel 267C3 for Channel 269A at Martin, Tennessee and to modify the license of WCMT-FM, Martin, Tennessee to specify Channel 267C3. 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

No. of Copies rec'd 024
List ABCDE

RECEIVED

DEC 9 1996

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

Federal Communications Commission
Office of Secretary

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

To: Chief, Allocations Branch

REPLY COMMENTS

Thunderbolt Broadcasting Company, by its attorneys^{1/}, pursuant to Notice of Proposed Rule Making, DA 96-1627, released October 4, 1996, hereby submits its Reply Comments in continuing support of the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee, and the modification of the license of WCMT-FM to specify operation on Channel 267C3. The following is submitted:

1. Now before the Commission in this proceeding are statements of interest in support of the retention of a Tiptonville channel from Twin States Broadcasting, Inc.^{2/} and

^{1/} The law firm of Pepper & Corazzini, L.L.P. previously withdrew as counsel of record for Thunderbolt Broadcasting Company in this proceeding due to the occurrence of a conflict. That conflict has now been resolved. Pepper & Corazzini, L.L.P. now re-enters its appearance in this proceeding as counsel to Thunderbolt Broadcasting Company. Robert Lewis Thompson of Taylor, Thiemann & Aitken, L.C. will remain as co-counsel to Thunderbolt Broadcasting Company.

^{2/} Statement of Interest filed October 15, 1996.

from Terry Hailey^{3/}. Initially, it should be noted that the November 22, 1996 Comments of Terry Hailey are deficient in that, contrary to Appendix, Section 2, Terry Hailey fails to state a present intention "if authorized, to build a station promptly". While this omission may initially be viewed as minor, it takes on importance when viewed against the background of Terry Hailey's relationship to WENK of Union City, Inc., the previous permittee of the now cancelled construction permit at Tiptonville, Tennessee. Terry Hailey was the president of WENK of Union City, Inc., the permittee who previously failed to build the facility resulting in a cancellation of the Tiptonville construction permit. Terry Hailey now professes in this proceeding to have a continuing interest in the Tiptonville allotment yet fails to state in his comments, as required, that if he receives the construction permit authorization for Tiptonville, he will build a station promptly.

2. It is well settled that expressions of interest that are not timely filed in contested proceedings are not acceptable. See Santa Isabel, Puerto Rico and Christiansted, Virgin Islands, 3 FCC Rcd 2336, 2337 (1988). The failure to state an interest in a channel can cause a dismissal of that proposal. See Franklin and White Castle, Louisiana, 11 FCC Rcd 8662 (1996). "[T]he proponent of an allotment proposal, to be considered bona fide must state a clear intention to apply for

^{3/} Comments filed November 22, 1996.

the channel, as well as a willingness to construct a station". Oakhurst, Firebaugh and June Lake, California, 9 FCC Rcd 655 n. 3 (1994). This Terry Hailey has failed to do. Terry Hailey failed to timely state a willingness to construct a station once authorized on the channel in question. Therefore, his comments cannot be credited as a bona fide expression of interest.

3. It is not necessary, however, to resolve the apparent conflict between Tiptonville and Martin. Thunderbolt Broadcasting Company demonstrates in its November 25, 1996 Comments and Counterproposal that first local service at Tiptonville may be obtained on Channel 247A while also upgrading WCMT-FM to Channel 267C3. At the same time, Thunderbolt Broadcasting Company in its November 25, 1996 Comments and Counterproposal expresses its interest in providing first local service to Tiptonville on Channel 247A.

4. To the extent that a Class A channel rather than a Class C3 channel will be allotted to Tiptonville, Tennessee, it is well established that the public interest is best served by the allotment of a Class A channel where an expression of interest is received in such a Class A channel and the allotment of such a Class A channel will also allow for another allotment to be made. See Americus, Fort Valley and Smithville, Georgia, 6 FCC Rcd 942 (1991) (Class A channel allotted in place of a Class C3 channel where the allotment of a Class A channel would allow for an upgrade for another station and

there was an expression of interest in the Class A channel received); Cottage Grove and Bend, Oregon, 6 FCC Rcd 4208 (1991) (where a valid expression of use of a Class A channel has been received, and no party has made any showing that a higher class channel would provide a first or second full-time aural service or that a Class A channel is insufficient to provide the requisite signal coverage to the community, the Class A channel will be allotted to allow for an upgrade to also be made).

5. Even if it can be shown that a Channel 267C3 allotment at Tiptonville would result in increased population coverage as compared with the allotment of an upgraded channel for WCMT-FM, the upgrade of WCMT-FM along with the allotment of Channel 247A to Tiptonville should be preferred. There are greater public interest benefits in providing for both first local service at Tiptonville, and upgraded service to Martin, Tennessee. See Homerville, Lakeland and Statenville, Georgia, 11 FCC Rcd 7526, 7529 (1996) (No matter which proposal is granted, community receives first local transmission service -- therefore proposal that also includes upgraded channel provides greater public interest benefits). Further, a loss of service as between a Class C3 channel or a Class A channel at Tiptonville is not an issue since there is now no station authorized at Tiptonville. See Bagdad and Chino Valley, Arizona, DA 96-1810, released November 8, 1996. Finally, the Tiptonville proposal must be treated as a proposed new allotment since the channel has never

been activated. See Peshtigo and Valders, Wisconsin, 10 FCC Rcd 3883 (1995). Therefore, the fact that there is an unactivated Class C3 channel now allotted to Tiptonville is of no consequence in the comparison to be made.

6. In order to accommodate the allotment of Channel 247A at Tiptonville, Tennessee as proposed by Thunderbolt Broadcasting Company, it is necessary to modify the licensed operation of WWEZ(FM), Trenton, Tennessee from Channel 248C3 to Channel 249C3^{4/}. An order to show cause pursuant to Section 1.87 of the Commission's rules should be immediately issued to Trenton Wireless Corp., the licensee of WWEZ(FM). Thunderbolt Broadcasting Company has stated that it will reimburse the licensee of WWEZ(FM) for its reasonable costs of changing its frequency should it be the ultimate permittee of Channel 247A at Tiptonville, Tennessee.^{5/} See New Sharon and Albia, Iowa and Memphis, Missouri, 6 FCC Rcd 7429, 7430 (1991) (reimbursement by the ultimate permittee of a new channel is required for the reasonable costs of changing a frequency of an existing station in order to make a new allotment).

^{4/} As noted in the Thunderbolt Broadcasting Company Comments and Counterproposal, this modification of license may be made at the present licensed coordinates for WWEZ(FM). In fact, this channel modification will eliminate present short spacing between WWEZ(FM) and WKJQ-FM, Parsons, Tennessee that now exists with WWEZ(FM) operating on Channel 248C3.

^{5/} Thunderbolt Broadcasting Company stated in its Comments and Counterproposal that it would reimburse WWEZ(FM) upon becoming the licensee of Channel 267C3 at Martin, Tennessee. That is incorrect. Thunderbolt Broadcasting Company will reimburse WWEZ(FM) if it is the ultimate permittee of Channel 247A at Tiptonville, as required by Commission policy.

7. Terry Hailey in his November 22, 1996 Comments submits certain factual material in support of the allotment at Tiptonville. As shown above, however, there is no need to compare the communities of Tiptonville and Martin. Each may be accommodated with Tiptonville receiving first local service from Channel 247A and Martin receiving upgraded service from Channel 267C3.

8. It is noted, however, that certain geographic and demographic statements provided by Terry Hailey are exaggerations, at best. As shown in the attached declaration titled "Reply Comments", Paul Tinkle states that contrary to the reference by Terry Hailey of a nearby "mountain site", there are no mountains in Lake County, Tennessee. Rather, Lake County is defined as West Tennessee uplands which is comprised of hills and bluffs. In response to the notation of "industries thriving" in Tiptonville, it appears there are only two industries in Tiptonville: Georgia Gulf Corporation and H.I.S. Corporation. Contrary to Tiptonville being a "thriving community", it appears that Plastics Technology and Tri County Alfalfa both terminated operations in approximately 1991 leaving the city with only the two industries noted above. Finally, Terry Hailey's Comments state that "the community is the headquarters of Reelfoot Lake State Resort Park". The actual headquarters location of the park, however, is at the Reelfoot Lake Air Park Inn and Restaurant which is located 12 miles north of Tiptonville on Highway 213. It is unfortunate

that Terry Hailey feels the necessity to exaggerate the attributes of Tiptonville in order to support his position.

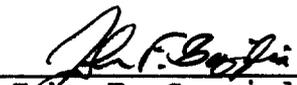
9. In conclusion, both first local service at Tiptonville and upgraded service for WCMT-FM at Martin may be obtained in this proceeding. Consequently, there is no need for any comparison between Tiptonville and Martin, and both allotments should be promptly made.

WHEREFORE, for the reasons above, Channel 267C3 should be substituted for Channel 269A at Martin, Tennessee and the operation of WCMT-FM should be modified to specify Channel 267C3; Channel 249C3 should be substituted for Channel 248C3 at Trenton, Tennessee and the operation of WVEZ(FM) modified to specify operation on Channel 249C3; and Channel 247A should be allotted to Tiptonville, Tennessee as its first local transmission service.

Respectfully submitted,

THUNDERBOLT BROADCASTING COMPANY

By: _____


John F. Garziglia
Its Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

December 9, 1996

REPLY COMMENTS

The following comments are in response to COMMENTS filed by Mr. Terry Hatley, by his attorney, regarding geographic and demographic information in the Matter of Martin & Tipsonville, Tennessee.

In reply to a nearby "*mountain site*" in note 1, there are no mountains in Lake County, Tennessee. Dr. Michael Gibson, PH.D., University of Tennessee, Geology, Geographic and Physics Department states "the area from the bluff line east of the Mississippi River in Lake County is defined as West Tennessee Uplands which is comprised of hills and bluffs but no mountains."

In reply to "*industries thriving*", four industries are noted in comments while Tipsonville city hall clerk Fran Hearn states Tipsonville has only two industries: Georgia Gulf Corporation and H.I.S. Corporation.

In reply to "Tipsonville is the sight of one of the major private employers in Western Tennessee, H.I.Siegel, manufacturers of Chic Jean (for women) which employ some 225 persons" Ms. Carolyn Watts secretary at H.I.S. states employment at 190 full time and manufacturers Chic Jeans for women and H.I.S. jeans for men and boys. Furthermore, H.I.S. plants are located in the West Tennessee towns of Tipsonville, Glasgow, Trezevant, Saffilo, Bruceton, Camden, and South Fulton, Tennessee. In reply to "major private employer for West Tennessee." H.I.S. is a publicly traded stock on the N.Y.S.E.

In reply to "Tipsonville, the county seat of Lake County is a thriving community" Ms. Hearn states Plastics Technology and Tri County Alfalfa both terminated operations in about 1991 leaving the city with only two industries as stated above. Both companies were noted in comments "*Industry thrives in Tipsonville*".

In reply to comments "the community is the headquarters of Reelfoot Lake State Resort Park" Ms. Janice McCain, of the Park office states, "the actual headquarters location of the park is at the Reelfoot Lake Air Park Inn and Restaurant located in the State of Tennessee owned Air Park Inn Motel 12 miles north of the Tipsonville on highway 213. Reelfoot Lake State Park is located in both Obion County and Lake County, Tennessee. The park area includes 18,000 acres of water and wetlands and the park area includes woodlands, boat docks, ramps, day use area and campgrounds. The Reelfoot Air Park airstrip is located eight miles north of Tipsonville and is unattended.

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 General Manager of radio station WCMT (FM), Martin, Tennessee.**
- 2. I have provided certain demographic information about Tiptonville, Tn. and Lake County, Tennessee for the attached "Comments" of Thunderbolt Broadcasting Company.**
- 3. I affirm under penalty of perjury that the forgoing is true and correct to the best of my information and belief.**



**Paul Freeman Tinkle
December 5, 1996**

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 9th day of December, 1996 by U.S. first class mail, postage prepaid, to the following:

* Ms. Pam Blumenthal
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
Fifth Floor
Washington, D.C. 20554

Eric S. Kravetz, Esquire
Brown Nietert & Kaufman, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(Counsel to Twin States Broadcasting, Inc.)

Philip R. Hochberg, Esquire
Verner, Liipfert, Bernhard,
McPherson & Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
(Counsel to Terry Hailey)

Trenton Wireless Corp.
P.O. Box 500
Trenton, Tennessee 38382
[Licensee of WWEZ(FM), Trenton, Tennessee]



Tracey S. Westbrook

* via hand delivery