

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

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Federal Communications Commission  
Office of Secretary

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| In the Matter of               | ) |                     |
| Amendment of Section 73.202(b) | ) | MM Docket No. 96-10 |
| Table of Allotments            | ) | RM-8738             |
| FM Broadcast Stations          | ) | RM-8799             |
| (Farmersville, Blue Ridge,     | ) | RM-8800             |
| Bridgeport, Eastland,          | ) | RM-8801             |
| Flower Mound, Greenville,      | ) |                     |
| Henderson, Jacksboro, Mineola, | ) |                     |
| Mt. Enterprise, Sherman and    | ) |                     |
| Tatum, Texas; and Ada, Ardmore | ) |                     |
| and Comanche, Oklahoma         | ) |                     |

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

SUPPLEMENTAL COMMENTS

1. Hunt Broadcasting Company, Inc. ("KIKM") by its counsel, hereby submits Supplemental Comments in response to a request by Commission staff for a clarification of the Agreement between KIKM and American Family Association ("AFA"), applicant for a new noncommercial educational FM station.

2. On October 23, 1996, KIKM filed a Response to the Public Notice of October 8, 1996, which had reported that an application filed on April 4, 1996, by AFA, for a new noncommercial educational ("NCE") FM station at Ada, Oklahoma conflicted with KIKM's pending proposal. KIKM and AFA resolved the conflict by AFA's amendment to its pending application to specify a site change. As a result, AFA

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could continue to prosecute its application for a new NCE FM station and KIKM's rule making proposal could be processed.

3. On December 13, 1996, the Commission granted KIKM's proposal by Report and Order and approved the AFA/KIKM settlement. See note 15 of the Report and Order. Subsequently an unrelated Petition for Reconsideration was filed which is still pending.

4. Section 1.420(j) of the Commission's Rules is designed to eliminate the filing of rule making pleadings which, if withdrawn, could result in a pay off. Thus, if a party seeks to withdraw an expression of interest, the rule limits the amount of payment the withdrawing party can receive to its legitimate and prudent expenses. Abuses of the Broadcasting Licensing and Allotment Process, 5 FCC Rcd 3911 (1990), recons denied 6 FCC Rcd 3280 (1991).

5. As a preliminary matter, KIKM does not believe that the rule applies to AFA's application. AFA filed its application before KIKM filed its rule making proposal and therefore could not have known of KIKM's filing. Further, AFA did not file its application or any proposal in this docketed proceeding. Thus, AFA can not be viewed as having intended to file a proposal for the purpose of receiving a payment.

6. Secondly, AFA did not withdraw its application or proposal. Rather, it agreed to specify a non-conflicting transmitter location so that it could obtain a new NCE FM station at Ada. KIKM is unaware of any Commission interpretation of the rule which would extend to a party which (1) filed an application before the rule making proposal, (2) did not file in the allotment proceeding and (3) did not withdraw its application or proposal but amended it to resolve a conflict.

7. Nevertheless, KIKM and AFA have enclosed certification statements affirming that AFA is not receiving a payment beyond its legitimate and prudent expenses in changing its site location. AFA will incur additional expenses in changing its transmitter location which is reflected in the payment by KIKM so that AFA is made whole. Thus, AFA will not profit in any sense from its willingness to relocate and resolve the conflict. Accordingly, the AFA amendment complies with Section 1.420(j) of the Commission's Rules.

Thus, KIKM urges the Commission to issue a final order in this proceeding affirming the Report and Order.

Respectfully submitted,

HUNT BROADCASTING COMPANY, INC.

  
By: Mark N. Lipp  
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CERTIFICATION

I hereby state that I am Sec-Treas. of American Family Association ("AFA"). On October 23, 1996 AFA provided a statement as part of a pleading submitted by Hunt Broadcasting Company, Inc. in which AFA agreed to eliminate a conflict between its pending application (BPED 960404MB) and the pending rule making proposal in MM Docket No. 96-10. Pursuant to the agreement, AFA amended its application to specify a non conflicting transmitter site in exchange for a payment of \$39,992 representing the legitimate and prudent engineering costs of changing the transmitter site upon final grant of either the rule making proposal or the AFA application.

I certify that these statements are true, complete and correct to the best of my knowledge and belief and are made in good faith.

American Family Association

Ferris Ann Daniels  
Sec-Treas.

April 4, 1997  
Date

CERTIFICATION

I, Janice Hunt, President of Hunt Broadcasting, Inc., hereby state that I have not paid nor promised to pay to American Family Association, any consideration in excess of its legitimate and prudent expenses for the transmitter site change. I certify that this statement is true, complete and correct and is made in good faith to the best of my knowledge and belief.



Janice Hunt, President  
Hunt Broadcasting, Inc.

4-2-97  
Date

**CERTIFICATE OF SERVICE**

I, Joyce Bazzle, a secretary in the law firm of Ginsburg, Feldman and Bress Chartered, do hereby certify that I have this 4th day of April, 1997, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "SUPPLEMENTAL COMMENTS" to the following:

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