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September 4, 1997

VIA HAND DELIVERY

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SEP - 4 1997
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20054

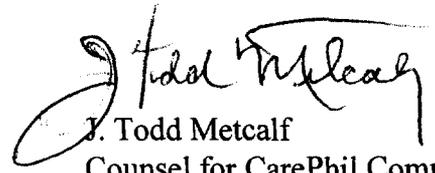
Re: MM Docket No. 95-126
RM-8671
Denison-Sherman, Paris and Jacksboro, Texas
Madill, Oklahoma

Dear Mr. Caton:

Transmitted herewith, on behalf of CarePhil Communications, is an original and four (4) copies of its *Memorandum in Support of Application for Review* in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



J. Todd Metcalf
Counsel for CarePhil Communications

Enclosures

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

SEP - 4 1997

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Denison-Sherman, Paris, and)
Jacksboro, Texas and)
Madill, Oklahoma))
)

MM Docket No. 95-126
RM-8671

TO: The Commission

MEMORANDUM IN SUPPORT OF APPLICATION FOR REVIEW

CarePhil Communications ("CarePhil"), licensee of Station KBUS, Paris, Texas, by its counsel, hereby submits this Memorandum in Support of the Application for Review of the *Memorandum Opinion & Order* ("MO&O"), 13 FCC Rcd _____ (1997) filed by Hunt Broadcasting, Inc. ("Hunt"), licensee of KIKM (FM) (formerly KDVE (FM)), Denison-Sherman, Texas, in this proceeding. Pursuant to Section 1.115(b)(2) of the Commission's Rules, review is warranted due to the need to revise or clarify the staff's policy with regard to changes to the Table of Allotments of broadcast stations which are ordered but are ultimately not required to be made to effectuate the Petitioner's proposal. In addition, the Commission should review the staff's failure to consider without explanation a modification to the Table of Allotments. In support hereof, the following is shown:

BACKGROUND

1. Hunt filed a Petition for Rule Making on May 2, 1995, which commenced this proceeding. The Commission adopted the rule changes proposed therein by *Report & Order* ("R&O"), 11 FCC Rcd 5316 (1996). Accordingly, the staff amended the Table of Allotments at Section 73.202(b) of the Commission's Rules as follows:

<u>Texas</u>	<u>Old</u>	<u>New</u>
Denison-Sherman	269C3	269C1
Paris	270C2	282C2
Jacksboro	269A	252A
 <u>Oklahoma</u>		
Madill	292A	273A.

2. The *RO&O* ordered the licensees/permittees of the affected stations to make the modifications required by the changes and ordered Hunt to reimburse these stations for their reasonable costs. Prior to this Order, Hunt had consented to reimbursing these stations. On June 4, 1996, CarePhil filed a petition for reconsideration asserting that despite its best efforts to negotiate with Hunt for a reimbursement amount before making the changes, Hunt was unwilling to negotiate. On July 16, 1996, Hunt filed an opposition to CarePhil's petition for reconsideration, which indicated that, on July 12, 1996, it had lodged with the Commission an application to implement the Class C1 channel change (BPH-960712IH), which demonstrated that it was not short-spaced to Station KBUS. In its opposition, Hunt reported that the Paris channel change was no longer necessary and indicated that the CarePhil reimbursement request was therefore moot.

3. CarePhil replied to Hunt's opposition indicating its support for Hunt's request to maintain the current channel allotment to Paris. Moreover, CarePhil stated its opposition to changing channels unless necessary but noted that the staff must re-amend the table of allotments to avoid the necessity of changing the KBUS channel from Channel 270C2 to Channel 282C2. Unless and until the staff so amends the Table of Allotments, an outstanding order of the Commission requires the channel change and, contrary to Hunt's assertion, makes CarePhil's reimbursement request ripe.

4. Notwithstanding the absence of short-spacing to KIKM's proposed transmitter site, the staff's *MO&O* held that the Paris channel change remained necessary. The staff concluded that a non-short-spaced reference point is required for the Class C1 allotment to be made. As a result of short spacing to KLAW (FM), Lawton, Oklahoma, the site specified in Hunt's application could not be used as a reference

point. Consequently, the staff decided that the reference point used in the *R&O* which requires a channel change for KBUS must remain in effect. Accordingly, the staff ordered the parties to negotiate in good faith.

DISCUSSION

5. In its Application for Review, Hunt describes the Commission's historic policy with respect to when a required channel change must be made. The Commission generally does not require a station to change channel until the benefitting party, in this case Hunt, is ready to offer its new or improved service. See *Churchville and Luray, Virginia*, 5 FCC Rcd 1106 (1990), *reconsideration denied*, 6 FCC Rcd 1313 (1991); *Broken Arrow, Oklahoma and Coffeerville, Kansas*, 4 FCC Rcd 6981 (1989); *Albany, New York et al*, 2 FCC Rcd 4200 (1987). Moreover, Hunt points out that the delay attendant channel changes varies widely and sometimes is as much as ten years.

6. In its Application for Review, Hunt points out that a Commission grant of the pending application of KIKM could mean that there would never be a real need for KBUS to change channel insofar as KIKM would be able to commence service consistent with the construction permit without the channel change. Accordingly, in light of this, the Commission must clarify when, if ever, KBUS will be required to change channels. In the Application, Hunt recognizes that when the move is required it is wholly responsible for the reasonable costs of the channel change.

7. In addition, Hunt has initiated a rule making proceeding which would render the Paris channel change moot. In MM Docket No. 97-104, Hunt has requested the substitution of Channel 269C for Channel 269C1 for KIKM and, by the same proceeding, to change its community of license from Denison-Sherman to Azle, Texas, as Azle's first local service. Should the Commission grant this unopposed proposal, it will not be necessary for KBUS to change channels. CarePhil is completely in accord with this conclusion and strongly encourages the Commission to revisit the necessity of the Paris channel change in light of this rule making.

8. Moreover, CarePhil is in complete agreement with the channel study submitted by Hunt in connection with MM Docket No. 97-104, which demonstrates that Station KBUS can remain on its present

channel (270C2) with a clearance of 29.6 km. Accordingly, CarePhil expresses its support for Hunt's suggested resolution herein, namely to await the outcome of MM Docket No. 97-104 before requiring any channel changes.

9. Because the KBUS channel change to Channel 282C2 has not become final, the Commission can order in this proceeding that Channel 270C2 need not be changed at Paris after action is taken in MM Docket No. 97-104 without any further showings. CarePhil strongly encourages the Commission to adopt the suggestion made by Hunt in its Application for Review.

10. Accordingly, CarePhil requests that the Commission rule on MM Docket No. 97-104 before taking any further action in or making further review of the instant proceeding. CarePhil also requests that the Commission clarify whether and when, if it is ultimately necessary, Station KBUS must change channels.

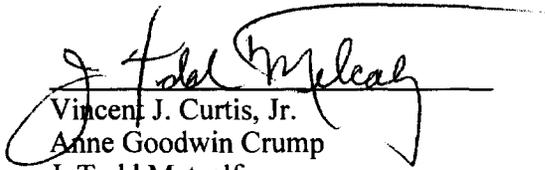
11. Finally, CarePhil requests that the Commission act pursuant to Section 1.429(k) of its Rules to stay the effective date of the *MO&O* in MM Docket No. 95-126 pending the outcome of the rule making in MM Docket No. 97-104.

WHEREFORE, the premises considered, CarePhil supports the Application for Review of the *Memorandum Opinion & Order* in this proceeding and the proposals therein.

Respectfully submitted,

CAREPHIL COMMUNICATIONS

By:


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Its Attorneys

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September 4, 1997

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that I have this 4th day of September, 1997, sent by first-class U.S. mail, postage-prepaid, copies of the foregoing "MEMORANDUM IN SUPPORT OF APPLICATION FOR REVIEW" to the following:

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