

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MOTION TO STRIKE
OR
REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Hunt Broadcasting, Inc. ("HBI"), licensee of Station KIKM(FM), Denison-Sherman, Texas, by its counsel, hereby moves to strike the "Opposition to Application for Review" filed on September 5, 1997 by Steve Landtroop, Inc. ("SLI"), licensee of Station KMAD-FM, Madill, Oklahoma as late filed. In the alternative, in the event the Commission decides to consider SLI's Opposition pleading, Hunt submits a reply. In support hereof, Hunt states as follows:

MOTION TO STRIKE

1. Section 1.115(d) states, inter alia, "Oppositions to the Application for Review shall be filed within 15 days after the Application for Review is filed." The Application for Review was filed on August 18, 1997, Thus, SLI's Opposition was due on or before September 2, 1997. In Note 1 to the Opposition, SLI seems to indicate that it believed that the filing date was September 5, 1997, based on SLI's receipt of the pleading on August 25, 1997 and a filing deadline 15 days after receipt. However, the deadline is based on Hunt's filing date and not on

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SLI's receipt date¹. In view of the lateness of SLI's filing, SLI was required to submit a separate pleading requesting permission to file on a late basis, which SLI failed to do. See Section 1.45(c) of the Commission's Rules. Accordingly, SLI's late filed Opposition should be dismissed without consideration. Should the Commission nevertheless accept SLI's pleading for consideration, Hunt offers the following reply comments.

DISCUSSION

2. Hunt submitted the Application for Review due to certain events which occurred after the Commission's Report and Order was issued and a Petition for Reconsideration was filed by Carephil Communications, licensee of Station KBUS, Paris, Texas. In particular, Hunt noted that it had instituted another rule making proceeding which, if granted, would make the Madill channel change unnecessary (MM Docket No, 97-104). As indicated, Hunt did not file a Petition for Reconsideration of the Report and Order. Indeed, Carephil Communications objected to the Commission's action in part because it preferred not to change channels. Hunt attempted to avoid the change in channels at Paris by filing for a transmitter site which was consistent with the Paris station remaining on its current channel.

3. SLI's argument that it has incurred significant expenses in reliance upon the Report and Order and in planning to upgrade to a Class C2 on its new channel has no merit. SLI should have recognized that the Commission's Report and Order was not final due to the Petition for Reconsideration filed by Carephil. SLI became the licensee of Station KMAD by an assignment of license which was consummated on January 21, 1997, after the Petition for

¹ Hunt did mail the Application for Review to Station KMAD on August 18, 1997 as stated in the Certificate of Service.

Reconsideration was filed. Any expenses incurred by SLI in reliance on a non-final Commission order is taken at SLI's own risk.

4. Furthermore, SLI can upgrade to a Class C2 facility on its new channel by the Commission's "one-step" application procedure at any time regardless of the finality of the Commission's Report and Order because Channel 273C2 is first adjacent to SLI's current operation for Channel 272A. See Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application 8 FCC Rcd 4735 (1993). In fact, SLI could have filed such an application at any time since it became the licensee. This proceeding, MM Docket No. 95-126, had no effect on SLI's ability to file a one-step application.

5. Hunt has stated in each of its filings, including the Application for Review, that if the Commission reaffirms its order that Channel 273A should be substituted for Channel 272A, Hunt will reimburse SLI as the licensee. Thus, Hunt has not "changed its mind". However, Hunt maintains that it is unnecessary to order the channel changes at Madill and Paris in this proceeding in view of the fact that Hunt's proposal in MM Docket No. 97-104 is unopposed and favorable action is therefore expected. As stated, SLI can upgrade on Channel 273C2 regardless of whether its channel is changed in this proceeding. What SLI is asking the Commission to do is to provide it with a windfall reimbursement payment for the move to Channel 273A at Hunt's expense when the change to Channel 273A is not necessary for SLI's upgrade and not required for Hunt's pending proposal.

6. Accordingly, Hunt Broadcasting, Inc. urges the Commission to disregard the opposition pleading filed by Steve Landtroop, Inc. as late filed since an adequate explanation for its tardiness was not provided. On the merits, the opponent is not entitled to a change in

frequency and reimbursement if it believes that such a change is a prerequisite to its ability to upgrade on the new channel.

Respectfully submitted,

HUNT BROADCASTING, INC.


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September 15, 1997

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CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Ginsburg, Feldman and Bress, Chartered, do hereby certify that I have, on this 15th day of September, 1997, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "MOTION TO STRIKE OR REPLY TO OPPOSITION TO APPLICATION FOR REVIEW" to the following:

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