

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

DOCKET FILE COPY ORIGINAL

A NEW YORK LIMITED LIABILITY PARTNERSHIP

901 FIFTEENTH STREET, N.W.  
WASHINGTON, D.C. 20005-2327

(202) 682-3500

FAX (202) 682-3580

NINE QUEENS ROAD CENTRAL  
HONG KONG  
852-2845-8989  
FAX 852-2845-3682

WRITER'S DIRECT DIAL NUMBER

425 PARK AVENUE  
NEW YORK, NY 10022-3598  
(212) 836-8000  
FAX (212) 836-8689  
  
1999 AVENUE OF THE STARS  
LOS ANGELES, CA 90067-6048  
(310) 788-1000  
FAX (310) 788-1200

June 8, 1998

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JUN 8 1998

ORIGINAL FILED IN DOCKET  
MM Docket No. 98-55  
RM-9255

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 98-55  
RM-9255

Dear Ms. Salas:

On behalf of North American Broadcasting Company, there is transmitted herewith an original and four (4) copies of its "Comments and Counterproposal" in the above-referenced proceeding.

Should any questions arise with regard to this matter, kindly communicate directly with the undersigned.

Very truly yours,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By: Bruce A. Eisen  
Bruce A. Eisen

Enclosure

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

JUN - 8 1998

In the Matter of: )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 98-55  
Table of Allotments, FM Broadcast Stations. ) RM-9255  
(Pleasanton, Bandera & Hondo, Texas) )

TO: Chief, Allocations Branch

**COMMENTS AND COUNTERPROPOSAL**  
**OF NORTH AMERICAN BROADCASTING COMPANY**

North American Broadcasting Company ("NABC"), by its attorneys, hereby submits its comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"). In support thereof, the following is shown:

**BACKGROUND**

1. NABC is an applicant for a new FM broadcast station to operate on Channel 276C2 at Karnes City, Texas (File No. ARN-960111MX). The Karnes City channel was allotted with a site restriction of 16.4 km east in light of a proposed allotment of Channel 276A at Bandera, Texas. NABC considered that site restriction to be significant. Not only did the site restriction raise the prospect of a lesser signal to the community of license, but it also stood to impede various operational aspects of the new station. For instance, the installation of a new STL link and the maintenance of the transmitter site would undoubtedly be impacted by the quantum of the site restriction.

2. NABC has strongly opposed the site restriction in the past. Hence, these comments reflect a continuing concern with inequitable treatment in the Karnes City allotment process and are in no way intended to hamstring any permittees or licensees elsewhere.

3. On December 17, 1990, Reding Broadcasting Company filed a counterproposal in response to a Notice of Proposed Rulemaking, 5 FCC Rcd 6265 (1990) in MM Docket No. 90-466. The rulemaking had proposed the substitution of Channel 254C3 for Channel 253A at Hondo, Texas, and the modification of Station KRBH-FM to specify operation on the higher powered channel. Reding's counterproposal requested the substitution of Channel 276A for Channel 252A at Bandera, Texas, inter alia, but the Commission's analysis revealed that Channel 276A at Bandera was shortspaced to vacant Channel 276B at Ciudad Acuna, Coahuila, Mexico. Reding had also requested substitution of Channel 290A for Channel 253A at Hondo, Texas, and this proposal was similarly found to be shortspaced to a Mexican vacant channel. Accordingly, the Commission dismissed the counterproposal without releasing a public notice. See, Hondo, Hollywood Park and Dilley, Texas, 7 FCC Rcd 7610, f.n. 3 (1992).

4. Reding thereafter filed a Petition for Reconsideration on December 23, 1992. Quite unexpectedly, the Commission released an October 11, 1995 Public Notice, Report No. 2104, announcing that Reding had filed a "Petition for Rulemaking" on December 17, 1990, and that the petition would be treated as a counterproposal in MM Docket No. 90-466. Later, the Commission released Karnes City, Texas, 10 FCC Rcd 11433 (1995), stating that Reding's request for a 16.0 km site restriction east of Karnes City was acceptable "in order to protect Reding's counterproposal".

5. That decision and the earlier public notice were erroneous in light of the Commission's well established policy that counterproposals must be technically and procedurally correct at the time of filing. See, e.g., Springdale, Arkansas, et al., 4 FCC Rcd 674 (1988), recon. denied, 5 FCC Rcd 1241 (1990). Reding's had not been correct. Fortunately, the Chief, Policy and Rules Division, ultimately released Hondo, Hollywood Park and Dilley, Texas, 13 FCC Rcd 234 (1998), wherein Reding's proposal was readdressed and its Petition for Reconsideration denied upon a finding that the 1990 counterproposal was unacceptable for filing and properly dismissed without consideration. Nevertheless, the Chief, Policy and Rules Division, concluded that although the counterproposal could not be considered in MM Docket No. 90-466, "it could be refiled and treated in a new proceeding".

6. It is unfair in the extreme for the Commission to consider once more a rulemaking proposal which would impose the severe site restriction at Karnes City. There is nothing inherently objectionable about the proposal set forth in the Notice of Proposed Rulemaking that concerns Pleasanton or Hondo, Texas. However, the Commission should refuse to replace the Bandera, Texas existing channel with Channel 276. Rather, it would surely further the Commission's allotment process if the agency considered and adopted an alternate channel for that community.

7. NABC counterproposes that FM Channel 256A be assigned as the replacement channel for FM Channel 252A at Bandera.<sup>1</sup> As the attached Engineering Statement shows, adoption of this counterproposal would retain all the public interest benefits of the Reding proposal, but the site restriction at Karnes City would be removed clearing the way for a better

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<sup>1</sup> This would also require that Channel 251A be assigned to Camp Wood, Texas, as a replacement channel for presently assigned FM Channel 256A at that community.

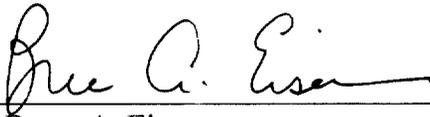
signal to that community and insuring a more efficient operation. No proponent would be injured by this counterproposal, NABC would be relieved from the continued fight over Reding's proposed site restriction at Karnes City, and Section 307(b) consideration would be advanced by the removal of a significant site restriction from the FM Table of Allotments.

In light of the foregoing, the Commission should adopt this counterproposal as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Pleasanton, TX	252A	253C2
Bandera, TX	252A	256A
Camp Wood, TX	256A	251A
Hondo, TX	253A	290A
Karnes City, TX	276C2 (site restriction 16 km east)	276C2 (site restriction 5.9 km north)

Respectfully submitted,

NORTH AMERICAN BROADCASTING COMPANY

By:   
 Bruce A. Eisen  
 Its Attorney

KAYE, SCHOLER, FIERMAN,  
 HAYS & HANDLER, LLP  
 901 15th Street, N.W.  
 Suite 1100  
 Washington, D.C. 20005  
 (202) 682-3538

June 8, 1998

North American Broadcasting Company  
1100 Guadalupe  
Austin, Texas 7B701

**ENGINEERING STATEMENT**  
Comments and Counterproposal  
MM Docket 98-55  
Pleasanton, Hondo and Bandera, Texas  
June 1998

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STATE OF ILLINOIS            )  
                                  )        SS:  
COUNTY OF PEORIA            )

F. W. Hannel, after being duly sworn upon oath,  
deposes and states:

He is a registered Professional Engineer, by  
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor  
of Science and Master of Science degrees, both in Electrical  
Engineering;

His qualifications are a matter of public record and  
have been accepted in prior filings and appearances requiring  
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him  
personally or under his supervision and direction and;

The facts stated herein are true, correct, and  
complete to the best of his knowledge and belief.

June 5, 1998



F. W. Hannel, P.E.

F. W. Hannel, PE  
911 Edward Street  
Henry, Illinois 61537  
(309) 364-3903  
Fax (309) 364-3775

North American Broadcasting Company  
1100 Guadalupe  
Austin, Texas 7B701

**ENGINEERING STATEMENT**  
Comments and Counterproposal  
MM Docket 98-55  
Pleasanton, Hondo and Bandera, Texas  
June 1998

**ENGINEERING STATEMENT**

This firm has been retained by North American Broadcasting Company, an applicant for FM Channel 276C2 at Karnes City, Texas, to prepare this engineering statement in support of this counterproposal in the above captioned proceeding. This Docket 98-55 proposes that the FM Table of Allotments be amended to assign FM Channel 253C2 to Pleasanton, Texas, as an upgraded channel for the presently assigned FM Channel 252A at Pleasanton, Texas. In order to accomplish this upgrade at Pleasanton, it is proposed that FM Channel 290A be assigned to Hondo, Texas, as a replacement channel for its presently assigned FM Channel 253A, and that FM Channel 276A be assigned to Bandera, Texas, as a replacement channel for the presently assigned FM Channel 252A. Reding Broadcasting Company, licensee of Radio Station KBUC(FM) at Pleasanton, Texas, has indicated to the Commission that the licensee of KRBH(FM) at Hondo, Texas, has agreed to relocate its transmitter site, and likewise, the licensee of Radio Station KEEP(FM) at Pleasanton, Texas, has consented to the change in its channel.

As an initial matter, it should be noted that North American Broadcasting Company has consistently opposed the imposition of the additional site restriction for the Karnes City, Texas, allotment, and since the Karnes City allotment was made North American Broadcasting Company has opposed the assignment of FM Chanel 276A to Bandera. The original allotment petition at Karnes City had a site restriction of 5.9 km north of the community, however, in the Commission's final order assigning FM Channel 276C2 to Karnes City an additional restriction was imposed. The Commission, in its original Order that allotted FM Channel 276C2 to Karnes City, noted that "Reding requests that the Commission specify a site restriction of 16.0 kilometers east of Karnes City instead of 5.9 kilometers north in order to accommodate its counterproposal filed in MM Docket No.90-466." North American Broadcasting Company has consistently opposed this additional site restriction required to accommodate FM Channel 276A at Bandera, and North American Broadcasting Company filed opposition to the original Reding proposal in MM Docket 90-466. The Commission dismissed the Reding proposal in that docket, but has now issued this rulemaking proposal which again seeks to impose the very same site restriction by assigning FM Channel 276A at Bandera.

North American Broadcasting Company has no technical opposition to any portion of the proposal announced in MM Docket 98-55 except the assignment of FM Channel 276 as a replacement channel at Bandera, Texas. The only purpose in filing this counterproposal is to propose an alternate channel

substitution for the proposed FM Channel 276A at Bandera, Texas, so that the site restriction as was originally proposed in the Karnes City rulemaking proposal is retained. The operational and logistical simplification resulting from a transmitter site 5.9 km from the city of license versus one 16 km distant is clear. Studio to transmitter STL link maintenance as well as transmitter site maintenance at a site 6 km distant is more cost effective for a site at 6 km versus one at 16 km from the community of license.

This counterproposal provides all the benefits of the proposal filed by Reding and, in addition, provides for the removal of the site restriction at Karnes City. Specifically, this counterproposal requests that FM Channel 256A be assigned as a replacement channel for FM Channel 252A at Bandera, Texas, and that FM Channel 251A be assigned to Camp Wood, Texas, as a replacement channel for the presently assigned FM Channel 256A at Camp Wood. Channel 256A at Camp Wood has an outstanding construction permit and the facility has not been licensed at this time.

Adoption of this counterproposal retains all of the public interest benefits of the Reding proposal, and additionally, the site restriction at Karnes City is essentially removed. Rather than being in conflict with the Reding proposal, this proposal further advances the public interest by the removal of one additional site restriction in the FM Table of Allotments. No community is deprived of service, nor is any other aspect of the Reding proposal affected.

Attached as Exhibit E-1 is an FM Channel Study conducted on FM

Channel 256A at the present site of Radio Station KEEP(FM) at Bandera, Texas, which shows that the proposed assignment is in full compliance with the Commission's minimum mileage separation requirements, with the lone exception of FM Channel 256A at Camp Wood, Texas. Also attached as Exhibit E-2 is an FM Channel Study conducted at the Construction Permit site at Camp Wood, Texas, on FM Channel 251A

In view of the foregoing, it is requested that the channel changes as outlined below be adopted and that the Commission amend the FM Table of Allotments accordingly.

City	Present	Proposed
Hondo, Texas	253A	290A
Bandera, Texas	252A	256A
Camp Wood, Texas	256A	251A
Pleasanton, Texas	252A	253C2
Karnes City, Texas	276C2 Site Restriction 16 km East	276C2 Site Restriction 5.9 km North

The above changes in the FM Table of Allotments retains all of the public interest benefits of the original proposal plus the public interest benefit of the removal of the additional site restriction placed on the Karnes City, Texas, allotment. No community is deprived of service and this counterproposal, if adopted, clearly serves the public interest.

North American Broadcasting Company  
 1100 Guadalupe  
 Austin, Texas 7B701

**ENGINEERING STATEMENT**  
 Comments and Counterproposal  
 MM Docket 98-55  
 Pleasanton, Hondo and Bandera, Texas  
 June 1998

FM CHANNEL 256A  
 N29-51-22  
 W99-05-25

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
KPAC	San Antonio	TX	202	C1	L	51.2	21.0	136.1°	30.2
ALC	Hondo	TX	253	A	U	68.0	31.0	185.4°	37.0
KBUC	Pleasanton	TX	253	C2	A	86.7	55.0	149.3°	31.7
KBUC	Pleasanton	TX	253	C2	A	86.7	55.0	149.3°	31.7
KRBH	Hondo	TX	253	A	D	66.9	31.0	182.9°	35.9
KRBH	Hondo	TX	253	A	D	66.9	31.0	182.9°	35.9
KRBH	Hondo	TX	253	A	C	66.9	31.0	182.9°	35.9
ALC	Dilley	TX	255	C2	U	131.5	106.0	183.4°	25.5
ALC	Lampasas	TX	255	C1	U	143.2	133.0	47.7°	10.2
KJFK	Lampasas	TX	255	C1	L	143.2	133.0	47.7°	10.2
NEW	Dilley	TX	255	C2	C	123.0	106.0	182.9°	17.0
ALC	Camp Wood	TX	256	A	U	91.5	115.0	256.9°	-23.5
KAYG	Camp Wood	TX	256	A	C	90.8	115.0	260.1°	-24.2
ALC	San Antonio	TX	258	C	U	102.7	95.0	128.8°	7.7
KISSFM	San Antonio	TX	258	C	L	102.7	95.0	128.8°	7.7

**KAYG(FM), Camp Wood, Texas moved to 251A**

All distaces in km

North American Broadcasting Company  
1100 Guadalupe  
Austin, Texas 7B701

### ENGINEERING STATEMENT

Comments and Counterproposal  
MM Docket 98-55  
Pleasanton, Hondo and Bandera, Texas  
June 1998

FM CHANNEL 251A  
N29-42-53  
W100-00-56

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
ALC	San Carlos	CI	248	C		114.7 95.0		228.6°	19.7
ALC	Austin	TX	251	C1	U	225.8 200.0		75.0°	25.8
KVETFM	Austin	TX	251	C1	L	218.6 200.0		75.1°	18.6
ALC	Bandera	TX	252	A	U	91.0 72.0		83.0°	19.0
KEEP	Bandera	TX	252	A	D	90.8 72.0		80.1°	18.8
KEEP	Bandera	TX	252	A	D	90.8 72.0		80.1°	18.8
KEEP	Bandera	TX	252	A	L	90.8 72.0		80.1°	18.8

All distances in km

**CERTIFICATE OF SERVICE**

I, Toni R. Daluge, a secretary in the law offices of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 8th day of June, 1998, a copy of the foregoing "Comments and Counterproposal of North American Broadcasting Company" was sent via regular United States mail, postage prepaid, to the following:

Mark N. Lipp, Esq.  
Shook, Hardy & Bacon  
801 Pennsylvania Ave, N.W.  
Washington, D. C. 20004

Gene A. Bechtel, Esq.  
Bechtel & Cole, Chartered  
1901 L Street, N.W.  
Suite 250  
Washington, D.C. 20036

Wood & Brinton, Chartered  
2300 M Street, N.W.  
Suite 900A  
Washington, D.C. 20037

James G. Withers  
1921 Crampton Court  
Chesterfield, Missouri 63017

Five Points Broadcasting, Inc.  
9450 Plainfield Drive  
Rock Hill, Missouri 63119

  
\_\_\_\_\_  
Toni R. Daluge