Rosenman

ROSENMAN & COLIN LLP
1300 19TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640
FACSIMILE: (202) 429-0046
WEB SITE: http://www.rosenman.com

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

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JUN 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 30, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket Nos. 96-7 and 96-12
(Banks, Redmond, Sunriver, Corvallis, and The Dalles OR)

Dear Ms. Salas:

Enclosed for filing on behalf of our client, CBS Radio License Inc. ("CBS"), licensee of Station KBBT-FM, Banks, Oregon, are an original and four (4) copies of its "Response to Petition for Reconsideration" ("Response") in the two above-referenced FM channel rulemaking proceedings. The Response is being filed today in accordance with a Consent Motion for Extension of Time filed on June 10, 1998.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

Jerold L. Jacobs

Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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JUN 30 1998

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-7
Table of Allotments,	)	RM-8732
FM Broadcast Stations	)	RM-8845
(Banks, Redmond, Sunriver and Corvallis, Oregon)	)	
	)	
In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 96-12
Table of Allotments,	)	RM-8741
FM Broadcast Stations	)	
(The Dalles and Corvallis, Oregon)	)	
	)	
In re Application of	)	
	)	
Madgekal Broadcasting, Inc.	)	File No. BPH-960206IE
Station KFLY(FM), Corvallis, Oregon	)	
	)	
For Construction Permit to Modify	)	
Licensed Facilities (One-Step Upgrade)	)	

To: Chief, Allocations Branch
Mass Media Bureau

RESPONSE TO PETITION FOR RECONSIDERATION

Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Attorneys for CBS Radio License Inc.

Dated: June 30, 1998

51001523.03

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SUMMARY

In the accompanying "Response to Petition for Reconsideration," CBS Radio License Inc. ("CBS"), licensee of Station KBBT-FM, Banks, Oregon, supports in part but generally opposes the "Petition for Reconsideration" ("Petition") filed in this proceeding by Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon.

By Report and Order, 13 FCC Rcd 6596 (Mass Media Bur. 1998), the Chief, Allocations Branch of the Commission's Mass Media Bureau (the "Bureau") rejected a proposed settlement agreement filed in this proceeding and, inter alia, amended the FM Table of Allotments by modifying Station KBBT-FM's license to specify operations on Channel 298C1, instead of Channel 298C2, at Banks, Oregon, and by allotting Channel *268C3 to The Dalles, Oregon. MBI's Petition urges that the settlement agreement should have been approved by the Bureau or, alternatively, that, instead of the Banks and The Dalles allotments, the Bureau should have modified Station KFLY(FM)'s license to specify operations on Channel 268C, instead of Channel 268C2, at Corvallis, Oregon. As the successor licensee of Station KBBT-FM, CBS continues to support Bureau approval of the settlement agreement. However, in the event that the Bureau affirms its rejection of the agreement, CBS urges that the Bureau should nevertheless grant MBI's recently-filed one-step upgrade application (File No. BPH-980515IC) to operate Station KFLY with Class C1 facilities, instead of full Class C facilities. Such a grant will allow Station KBBT-FM's Class C1 upgrade and the allotment of Channel *268C3 to The Dalles, as well as Station KFLY's Class C1 upgrade.

If, upon reconsideration, the Bureau affirms its rejection of the settlement agreement, MBI attacks the allotments granted in the Report and Order on the merits and urges that "the

KFLY [full Class C] upgrade should be found to better serve the public interest than either the Banks upgrade by itself or the combination of the Banks upgrade and the proposed allotment of Channel *268C3 at The Dalles". CBS strongly disagrees. MBI's Petition raises six technical and legal-procedural issues concerning the Channel 268C3 allotment, but all of them lack technical or legal merit. Most importantly, all of MBI's arguments concerning Channel 268C3 are procedurally untimely (in violation of Section 1.429(b) of the Rules) and should be stricken.

As to MBI's view that, in a comparative allotment analysis, Station KFLY's proposed full Class C upgrade should be preferred to either the Banks upgrade by itself or the combination of the Banks upgrade and the allotment of a first noncommercial educational allotment to The Dalles, MBI is fatally mistaken in two respects. First and foremost, it is erroneous and misleading for MBI to posit the comparative allotment choices in the Report and Order as being: (1) KFLY Class C upgrade; or (2) KBBT-FM upgrade; or (3) KBBT-FM upgrade/Dalles allotment. MBI recently filed a Form 301 one-step upgrade application (File No. BPH-980515IC), in which it concedes that the Report and Order, as it presently stands, allows Station KFLY to upgrade to Channel 268C1 by filing an application outside of the rulemaking proceeding. Thus, it is clear, by MBI's own admission, that the comparative allotment choices in this proceeding are actually: (1) KFLY Class C upgrade; or (2) KFLY Class C1 upgrade/KBBT-FM upgrade; or (3) KFLY Class C1 upgrade/ KBBT-FM upgrade/Dalles allotment.

This restatement of the true comparative allotment choices demonstrates, ipso facto, that, under established Commission policy and case law, the Report and Order correctly concluded that the public interest would be best served by approving "Option 3". That Option not only maximizes the number of upgrades and new allotments granted in this proceeding, but also: (a) grants a first noncommercial educational allotment to The Dalles, which has special public

interest significance; and (b) affords Station KFLY an increase in areas and populations of 8270 square kilometers and 299,245 persons, which is only 1220 square kilometers and 26,724 persons less in areas and populations than if Station KFLY were granted full Class C facilities.

In sum, MBI is manifestly wrong when it argues that granting its proposed full Class C facilities alone has greater public interest importance than granting a Class C1 upgrade to KFLY, a Class C1 upgrade to Station KBBT-FM, and a first noncommercial educational service to The Dalles. The correct choice is not between granting "the KFLY upgrade and the KBBT upgrade". Rather, it is between improving FM broadcast service in three communities (Corvallis, Banks, and The Dalles), or only in Corvallis. MBI is being unabashedly greedy in its desire to obtain full Class C facilities for itself, regardless of the consequences for two other Oregon communities, when the paramount public interest clearly lies in affirming the rulemaking allotments made in the Report and Order and awarding MBI the substantial areas and populations increases inherent in granting Station KFLY's May 1998 Class C1 one-step upgrade application.

Before the
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For Construction Permit to Modify	)	
Licensed Facilities (One-Step Upgrade)	)	

To: Chief, Allocations Branch
Mass Media Bureau

RESPONSE TO PETITION FOR RECONSIDERATION

CBS Radio License Inc. ("CBS"), licensee of Station KBBT-FM, Banks, Oregon,[1] by its attorneys, hereby supports in part but generally opposes the "Petition for Reconsideration"

---

[1] The transfer of control of American Radio Systems and its licensee subsidiaries including American Radio Systems License Corp. ("ARSC") was effective on June 4, 1998. Also on that date, the name of ARSC, the licensee of Station KBBT-FM, was changed to CBS Radio License Inc. CBS Radio License Inc. is a subsidiary of CBS Corporation. Accordingly, CBS Radio License Inc. is the successor licensee of KBBT-FM.

("Petition") filed in the above-captioned proceeding by Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon.[2] In support of CBS's Response, the following is shown:

I. Introduction

1. By Report and Order, 13 FCC Rcd 6596 (Mass Media Bur. 1998), the Chief, Allocations Branch of the Commission's Mass Media Bureau (the "Bureau") rejected a proposed settlement agreement filed by ARSC and MBI in this proceeding and, inter alia, amended the FM Table of Allotments by modifying Station KBBT-FM's license to specify operations on Channel 298C1, instead of Channel 298C2, at Banks, Oregon, and by allotting Channel *268C3 to The Dalles, Oregon. MBI's Petition urges that the settlement agreement should have been approved by the Bureau or, alternatively, that, instead of the Banks and The Dalles allotments, the Bureau should have modified Station KFLY(FM)'s license to specify operations on Channel 268C, instead of Channel 268C2, at Corvallis, Oregon. As the successor licensee of Station KBBT-FM, CBS continues to support Bureau approval of the settlement agreement. However, in the event that the Bureau affirms its rejection of the agreement, CBS urges that the Bureau should nevertheless grant MBI's recently-filed one-step upgrade application (File No. BPH-980515IC) to operate Station KFLY with Class C1 facilities, instead of full Class C facilities. As further discussed in Section IV below, such a grant will allow Station KBBT-FM's Class C1 upgrade

---

[2] On June 10, 1998, CBS filed a "Consent Motion for Extension of Time" until June 30, 1998 to file this Response.

and the allotment of Channel *268C3 to The Dalles, as well as Station KFLY's Class C1 upgrade.

II. The Settlement Agreement Should Be Approved

2. In their "Joint Request for Approval of Agreement" and "Further Comments in Support of Joint Request for Approval of Agreement," MBI and ARSC demonstrated that their proposed settlement agreement does not contravene any Commission policy or rule or require waiver of any policy or rule. Yet, the Report and Order erroneously concluded that: (a) MBI's original Channel 268C one-step upgrade application (File No. BPH-960206IE) – which was filed on the very same day that the Commission released its MM Docket No. 96-7 Notice of Proposed Rule Making and seven days before the Commission released its MM Docket No. 96-12 Notice of Proposed Rule Making -- was "functionally equivalent" to a counterproposal and must be treated as an "expression of interest" in this consolidated proceeding subject to a reimbursement pay cap (13 FCC Rcd at 6602-03); and that (b) MBI's modification of its application proposal to accept a grant of Channel 268C1, instead of Channel 268C, was a "withdrawal" of its Class C proposal, rather than merely a modification (13 FCC Rcd at 6603), so that, again, any compensation therefor is subject to a pay cap.

3. It is clear that the issues presented by the MBI/ARSC settlement agreement are somewhat novel and without direct case precedent. For instance, to CBS's knowledge, there are no prior reported cases in which the Commission was asked to approve the modification of a FM rulemaking counterproposal, rather than its complete dismissal. Indeed, the Report and Order cites the same Commission policy and case decisions as MBI and CBS, but reaches opposite conclusions! Thus, CBS urges that, upon reconsideration, the Bureau should adopt a more

lenient interpretation of the unique facts in this case and should conclude that approval of the entire settlement agreement, including its global rulemaking solution and its monetary terms, is consistent with Commission policy and rules and is in the paramount public interest.

III. Channel *268C3 Was Properly Allotted to The Dalles

4. As stated in Paragraph 1, supra, in lieu of granting the MBI/ARASC settlement agreement, the Report and Order upgraded Station KBBT-FM to Channel 298C1 and allotted Channel 268C3 to The Dalles, but did not grant any upgrade to Station KFLY. In the event that the Bureau affirms its rejection of the MBI/ARSC settlement agreement, MBI urges (Petition at 10) that "the KFLY [full Class C] upgrade should be found to better serve the public interest than either the Banks upgrade by itself or the combination of the Banks upgrade and the proposed allotment of Channel *268C3 at The Dalles". CBS strongly disagrees, and, in this Section, it will demonstrate that the Report and Order properly allotted Channel 268C3 to The Dalles.

5. In its attack on the Channel 268C3 allotment, MBI's Petition raises six technical and legal-procedural issues, all of which CBS will now rebut seriatim:

(1) MBI's arguments concerning Channel 268C3 violate Section 1.429(b) and should be stricken

6. Under Section 1.429(b) of the Rules, a petition for reconsideration cannot rely on facts which have not been previously presented to the Commission and which were known or should have been known earlier unless "[t]he Commission determines that consideration of the facts relied on is required in the public interest". MBI's Petition (at 13) concedes that the Engineering Statement, called the McClanathan Report, which is some 60 pages in length, and upon which all of MBI's Channel 268C3 arguments are based, falls squarely within the

prohibited category of untimely factual arguments that should have been presented to the Commission two years ago. While MBI asserts that "[o]bviously, consideration of the facts set forth in the McClanathan Report is required in the public interest," CBS does not believe that this is "obvious" at all. Indeed, CBS urges that Section B of MBI's Petition (pages 13-21) and the McClanathan Report should be stricken and given no consideration in this proceeding.

7. MBI offers no word of explanation for its belated attack on the Report and Order's allotment of Channel 268C3 to The Dalles. However, it is obvious that MBI is now trying to overcome its complete failure for more than two years before the Report and Order was released to object to the Channel 268C3 allotment on technical or procedural grounds. At this late date, the only way that MBI can obtain full Class C facilities for Station KFLY is to undo the allotment of Channel 268C3 to The Dalles with its blatantly untimely alternatives, such as substituting Channel 215C3 or 256C3, or to propose the outright dismissal of MM Docket No. 96-12. CBS urges that the Bureau should thwart MBI's gamesmanship, which has no public interest justification and is a clear abuse of administrative due process.

(2) There is no reserved frequency available at The Dalles

8. Assuming arguendo that the Bureau does not strike Section B of MBI's Petition, CBS now turns to MBI's objections to the Report and Order's allotment of Channel 268C3 to The Dalles. First, MBI maintains (Petition at 14) that reserved Channels 201C3, 211C3, 213C3, and 215C3 are or may be available for use at The Dalles, so that the community is not eligible for allotment of a reserved noncommercial educational frequency, such as Channel *268C3, which is outside of the reserved portion of the FM band. Attached hereto as Exhibit A is an Engineering Statement prepared by Clarence M. Beverage of Communications Technologies,

Inc. ("Beverage Statement"). In it (at pages 4-5 and Figures 3-6), Mr. Beverage fully demonstrates that none of these four channels is actually available for allotment to The Dalles because of prohibited overlap of their proposed contours to existing stations in violation of Section 73.509 of the Rules or because of interference with TV Channel 6 (Station KOIN(TV), Portland, Oregon) in violation of Section 73.525 of the Rules.

(3) A fully-spaced station operating on Channel *268C3 can provide a 70 dBu city-grade contour over The Dalles

9. Next, MBI urges (Petition at 16) that "the allocation of Channel *268C3 to The Dalles is unsuitable because, from a fully spaced site, severe terrain obstructions render it impossible to deliver a city-grade signal to the community". However, the Beverage Statement finds (at page 3) that MBI's statement is "factually incorrect...and is without support in Madgekal's underlying engineering studies". More specifically, Mr. Beverage's analysis concludes and documents (id. and Figures 1-2) that the two different transmitter sites specified for Channel *268C3 at The Dalles in the Notice of Proposed Rule Making in MM Docket No. 96-12 ("Dalles NPRM"), 11 FCC Rcd 1788 (Mass Media Bur. 1996), and in the Report and Order "both...show 100%, 70 dBu service to The Dalles, using either the F(50,50) curves or the Longley-Rice propagation method".

(4) The non-conflicting channel that MBI proposes to allot to The Dalles is inferior to Channel 268C3

10. MBI (Petition at 16-17) belatedly attacks the Bureau's conclusion (in the Dalles NPRM) that Channel 256C3 cannot appropriately be allotted to The Dalles because it would have to be located 22.8 kilometers from The Dalles and only half the community would receive 70 dBu service. MBI notes that allotting Channel 256C3 to The Dalles, instead of Channel

268C3, would allow MBI to obtain a full Class C upgrade, as specified in its original application/ counterproposal (File No. BPH-960206IE), while the Channel 268C3 allotment prevents MBI from obtaining that full upgrade. Hence, MBI urges (id. at 17) that allotting Channel 256C3 fulfills the "Commission's policy to avoid allotment conflicts where possible".

11. Contrary to MBI's self-centered logic, the paramount public interest goal in FM channel rulemaking proceedings is not merely to "avoid allotment conflicts," but rather to maximize the number of communities that will have new or upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986) (§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one). In the instant case, MBI casually notes in footnote 13 of its Petition that allotting Channel 256C3 to The Dalles will permit Station KFLY to upgrade to a full Class C, but will preclude CBS's Station KBBT-FM from upgrading at all! Simply stated, that is why the Report and Order's allotments are far superior, on a public interest basis, to MBI's proposal, which would deny any upgrade to Banks, Oregon. The Report and Order properly granted Station KBBT-FM's upgrade to Channel 298C1 and allotted a first noncommercial educational Channel *268C3 to The Dalles. Moreover, the allotment site coordinates that it specified for The Dalles also allow Station KFLY to upgrade to Channel 268C1 – albeit outside the rulemaking proceeding (via a Form 301 one-step upgrade application, which MBI has already filed (File No. BPH-980515IC)). See Section IV below for a further discussion of the merits of the Report and Order's comparative allotment decision.

12. As to the technical merits of MBI's proposal for The Dalles, Mr. Beverage has examined MBI's Channel 256C3 showing. While he concludes (Beverage Statement at 5) that it would be technically permissible to allot Channel 256C3 to The Dalles, Mr. Beverage demonstrates (id. and Figures 7-9) that allotting Channel 268C3 represents a more efficient use of the spectrum, which is in the paramount public interest. Specifically, as Figure 9 illustrates, allotting Channel 268C3 to The Dalles with the site coordinates specified in the Report and Order will increase the future educational station's 60 dBu coverage area by 29% (2046 square kilometers versus 1580 square kilometers) and, most importantly, will increase the station's potential audience by 64% (48,075 persons versus 29,319 persons). This is especially significant in a comparative allotment analysis, since the "need for or lack of public radio service" was specifically identified in FM Channel Policies/Procedures, 90 FCC 2d 88, 92 n.8 (1982), as a factor warranting special consideration when comparative allotment analyses are being made.

13. Moreover, as Mr. Beverage tabulates (id. at 6 and Exhibit I of Station KBBT-FM's July 3, 1996 "Consolidated Joint Counterproposal Reply Comments" (attached hereto as Exhibit B)), Station KFLY's areas and populations would be only 1220 square kilometers and 26,724 persons greater if it were granted full Class C facilities (instead of the Class C1 upgrade that the Report and Order allows), while the failure to upgrade CBS's Station KBBT-FM to Class C1 (as a result of allotting Channel 256C3 to The Dalles) would deprive Station KBBT-FM of an increased 60 dBu service area of 7908 square kilometers and an increased audience of 231,322 persons. Under these circumstances, CBS submits that it is appropriate for the Bureau to affirm the Report and Order's determination that the public interest is better served by allotting Channel 268C3 to The Dalles, instead of Channel 256C3. See also Section IV below.

(5) The Commission did not violate its cut-off rules by putting out Channel 268C3 for comment

14. MBI also asserts (Petition at n.4 and 17-19) that the Bureau violated its application cut-off rules by putting out Channel 268C3 for comment in the Dalles NPRM, instead of the allegedly more favored proposal of LifeTalk Broadcasting Association ("LifeTalk") for Channel 256C3. In a vain attempt to support its reasoning, it has appended LifeTalk's November 20, 1995 Petition for Rule Making to MBI's Petition for Reconsideration (MBI Exhibit B). However, examination of LifeTalk's Petition, which was not filed by communications counsel and did not contain the imprimatur of a consulting engineer, reveals that it contained spacing studies for four possible channels – 256C3, 291C3, 268C3, and 240C3. While Channel 256C3 was listed as LifeTalk's first choice, CBS submits that it was reasonable for the Bureau to treat the other three channels as viable alternatives, and, in its several pleadings in this proceeding since November 1995, LifeTalk has never disputed the Bureau's choice of Channel 268C3.

15. In short, having been aware of LifeTalk's Petition for Rule Making and not having previously raised any cut-off objection to Channel 268C3 in its July 5, 1996 "Comments" or elsewhere in this proceeding, it is untimely and disingenuous for MBI to assert at this late date (Petition at 19) that it "had no notice that any alternative channel was contemplated" or that "LifeTalk proposed no alternative channels in its petition". The Commission is obliged to be especially painstaking when dealing with pro se petitions, see Christian Children's Network, Inc., 1 FCC Rcd 982 (Rev. Bd. 1986), citing Martin-Trigona v. Smith, 712 F.2d 1421, 1424 (D.C. Cir. 1983), and it was fully reasonable for the Bureau to construe LifeTalk's Petition for

Rule Making as a request for Channel 256C3 with three alternatives. Hence, the Bureau properly treated Channel 268C3 as having been proposed by LifeTalk on November 20, 1995 (the date that LifeTalk's Petition was filed). Therefore, the Channel 268C3 proposal, as put out for comment in the Dalles NPRM and adopted in the Report and Order, does not violate the Commission's cut-off rules and policies for applications and rulemaking petitions.

(6) LifeTalk adequately responded to the Commission's directive about agreeing to build a tall tower

16. Finally, MBI (Petition at 20-21) renews its previous claim that LifeTalk's allotment proposal should be disallowed because LifeTalk allegedly did not timely make an explicit pledge concerning erection of a higher tower, which the Commission requested in the Dalles NPRM. The Report and Order (13 FCC Rcd at 6604) concludes that LifeTalk's response was adequate, although "for absolute clarity" it could have phrased itself more precisely. CBS agrees that LifeTalk's original response was adequate. There are no magic words which were necessary to meet the Dalles NPRM's requirement for an "affirmative statement". The purpose of the requirement was not to trip up LifeTalk, but, rather, to alert LifeTalk to a special construction requirement and to obtain LifeTalk's assent. CBS urges that, even without LifeTalk's subsequent clarifying July 15, 1996 "Supplement," the record demonstrates LifeTalk's assent and compliance with the Dalles NPRM's request. MBI's objection is extremely formalistic, hypertechnical, and self-serving. It should be summarily denied.

IV. Grant of KFLY's Class C upgrade application would not better serve the public interest

17. In the final Section C of its Petition (at 22-24), MBI elaborates on its view (see Paragraph 4, supra) that the public interest would be better served by granting Station KFLY's

full Class C upgrade instead of either the Banks upgrade by itself or the combination of the Banks upgrade and the allotment of a first noncommercial educational allotment to The Dalles. As CBS will now show, MBI is fatally mistaken in two respects.

18. First and foremost, CBS submits that it is erroneous and misleading for MBI to posit the comparative allotment choices in the Report and Order as being: (1) KFLY Class C upgrade; or (2) KBBT-FM upgrade; or (3) KBBT-FM upgrade/Dalles allotment. As CBS noted in Paragraphs 1 and 11, supra, MBI filed a Form 301 one-step upgrade application on May 15, 1998 (File No. BPH-980515IC), which was accepted for filing on June 10, 1998 (Broadcast Applications, Report No. 24259, p. 9). Attached hereto as Exhibit C is the cover letter accompanying that application, in which MBI concedes that the Report and Order, as it presently stands, allows Station KFLY to upgrade to Channel 268C1 by filing an application outside of the rulemaking proceeding.

19. Specifically, MBI states in its cover letter that its May 1998 application is to "preserve the opportunity to upgrade from Class C2 to Class C1 status...[and that grant of this application] will enable MBI to improve service to the public from KFLY without forcing MBI to relinquish its right to continue to seek grant of its application for Class C facilities [through its Petition for Reconsideration in the rulemaking proceeding]." Thus, it is clear, by MBI's own admission, that the comparative allotment choices in this proceeding are actually: (1) KFLY Class C upgrade; or (2) KFLY Class C1 upgrade/KBBT-FM upgrade; or (3) KFLY Class C1 upgrade/ KBBT-FM upgrade/Dalles allotment.

20. Second, CBS submits that the above restatement of the true comparative allotment choices in the Report and Order demonstrates, ipso facto, that, under FM Channel Policies/

Procedures, supra, and Archilla-Marcocci Spanish Radio Co., supra, the Report and Order correctly concluded that the public interest would be best served by approving "Option 3" -- KFLY Class C1 upgrade/KBBT-FM upgrade/Dalles allotment. This is so because Option 3 not only maximizes the number of upgrades and new allotments granted in this proceeding, consistent with the teachings of Archilla-Marcocci Spanish Radio Co., supra, but also: (a) grants a first noncommercial educational allotment to The Dalles, which has special public interest significance under FM Channel Policies/Procedures, 90 FCC 2d at 92. n.8; and (b) affords Station KFLY an increase in areas and populations of 8270 square kilometers and 299,245 persons, which is only 1220 square kilometers and 26,724 persons less in areas and populations than if Station KFLY were granted its full Class C facilities (see Exhibit B hereto).

21. Expressing the comparative allotment choices in this proceeding numerically (based on Exhibit B), they are as follows:

Option 1:	KFLY	Ch. 268C	17,900 sq. kM	764,320 persons
	KBBT-FM (same)	Ch. 298C2	8,486 sq. kM	1,518,676 persons
Option 2:	KFLY	Ch. 268C1	16,680 sq. kM	737,596 persons
	KBBT-FM	Ch. 298C1	16,394 sq. kM	1,749,998 persons
Option 3:	KFLY	Ch. 268C1	16,680 sq. kM	737,596 persons
	KBBT-FM	Ch. 298C1	16,394 sq. kM	1,749,998 persons
	The Dalles allot.	Ch. 268C3	5,390 sq. kM	48,075 persons

Simply stated, contrary to MBI, the above facts and data fully demonstrate that the public interest in this proceeding is best served by granting Option 3 (or even Option 2), instead of Option 1.

V. Conclusion

22. In sum, CBS urges that MBI is manifestly wrong when it argues that granting its proposed full Class C facilities alone has greater public interest importance than granting a Class C1 upgrade to KFLY, a Class C1 upgrade to Station KBBT-FM, and a first noncommercial educational service to The Dalles. The correct choice is not between granting "the KFLY upgrade and the KBBT upgrade" (Petition at 24). Rather, it is between improving FM broadcast service in three communities (Corvallis, Banks, and The Dalles), or only in Corvallis. MBI is being unabashedly greedy in its desire to obtain full Class C facilities for itself, regardless of the consequences for two other Oregon communities, when the paramount public interest clearly lies in affirming the rulemaking allotments made in the Report and Order and awarding MBI the substantial areas and populations increases inherent in granting Station KFLY's May 1998 Class C1 one-step upgrade application.

WHEREFORE, in view of the foregoing, CBS respectfully requests that the Bureau should either grant the parties' settlement agreement in full or should affirm the allotments made

in the Report and Order and grant MBI's pending Form 301 application (File No. BPH-980515IC) to upgrade Station KFLY(FM) to Channel 268C1 at Corvallis, Oregon.

Respectfully submitted,

CBS RADIO LICENSE INC.

By _____
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

Dated: June 30, 1998

51001523.02

EXHIBIT A

ENGINEERING STATEMENT

CONCERNING ANALYSIS OF TECHNICAL ARGUMENTS CONTAINED IN PETITION FOR RECONSIDERATION IN MM DOCKETS 96-7, 96-12 AND CONSTRUCTION PERMIT MODIFICATION FOR KFLY(FM) BANKS, REDMOND, SUNRIVER AND CORVALLIS, OREGON

JUNE 1998

ENGINEERING STATEMENT
CONCERNING ANALYSIS OF TECHNICAL
ARGUMENTS CONTAINED IN
PETITION FOR RECONSIDERATION
IN MM DOCKETS 96-7, 96-12 AND
CONSTRUCTION PERMIT MODIFICATION FOR KFLY(FM)
BANKS, REDMOND, SUNRIVER AND CORVALLIS, OREGON

JUNE 1998

SUMMARY

The following engineering statement has been prepared on behalf of **CBS Radio License, Inc.**, licensee of KBBT(FM), Banks, Oregon. On May 19, 1998, Madgekal Broadcasting, Inc., licensee of KFLY(FM), Corvallis, Oregon, filed a Petition for Reconsideration in MM Docket Numbers 96-7 and 96-12 concerning its one-step upgrade application for KFLY, Corvallis, Oregon. Madgekal puts forth several engineering comments. The arguments are summarized below and then discussed fully herein. According to Madgekal:

1) In a Report and Order released April 3, 1998, Channel 268C3 was allotted to The Dalles at reference coordinates N.L. 45° 34' 00", W.L. 120° 55' 00". The Commission erred in that the allotment coordinates are terrain obstructed to The Dalles and the site will not place a 70 dBu city grade signal over The Dalles.

2) The allotment coordinates specified by the Commission for Channel 268C3 in its February, 1996 NPRM (RM-8741), N.L. 45° 31' 28", W.L. 121° 07' 22", are similarly terrain obstructed and do not allow 70 dBu city grade service to The Dalles.

3) Reserved Channels 201C3, 211C3, 213C3 and 215C3 are available for use at The Dalles, at an existing site near Stacker Butte, and will meet all FCC Rules and Regulations. For allocation and Channel 6 protection requirement purposes, the site of K256AC was utilized.

4) Channel 256C3 is available for allotment to The Dalles at a site known as Haystack Butte, N.L. 45° 41' 01", W.L. 120° 57' 17".

5) Channel 256C3 may be allotted at a site which provides line of sight to most of The Dalles, and the facility will provide 70 dBu service to all of The Dalles.

TERRAIN OBSTRUCTION - 70 dBu CITY GRADE SERVICE

The terrain profile plots submitted by Madgekal have been reviewed. *Exhibit 8* is a set of six profiles from the April 1998 allotment coordinates for Channel 268C3 to The Dalles. *Exhibit 9* is a set of eight profiles from the February 1996 coordinates for Channel 268C3 to The Dalles. *Exhibit 10* is a set of ten terrain profiles from Madgekal's proposed Channel 256C3 allotment coordinates to The Dalles.

Review of these profiles, and our independent analysis thereof, shows that the Madgekal terrain profiles are based on 3 second terrain data rather than the 30 second terrain data typically used by the FCC staff for analysis and application processing purposes. Most importantly, based on our experience and independent analysis, use of the 3 second data in this general region tends to increase the height of peaks and decrease the height of some valleys, resulting in path profiles which show as obstructed but which do not show as obstructed when 30 second terrain data is used.

Standard Allocation Branch policy is to assume that a given site will provide 70 dBu service to the allotment community if the site is located within the appropriate 70 dBu distance from the city reference coordinates. In cases where a terrain obstruction has been found to exist between a proposed allotment site and the community of license, it does not necessarily follow that the proposal does not meet the requirements of *Section 73.315*. In Bald Knob and Clarenda, Arkansas, 6 FCC Rcd 7435, 7436 (Assistant Chief, Allocations Branch 1991), the Commission stated that line-of-sight must be obtained over the entire community, and in Jefferson City, Tennessee, 10 FCC Rcd 12207, 12209 (Chief, Allocation Branch 1995), an allotment was denied because the petitioner failed to demonstrate the existence of a site that could provide line-of-sight to the entire community. However, these cases must be taken in the context in which

they were written. Neither petitioner successfully demonstrated that the obstruction would not prevent the proposed site location from serving the community of license with a signal level of 70 dBu or greater. In true fact, the Commission has long held that *73.315(b)* is advisory in nature and not an absolute requirement. See e.g. Jesse Willard Shirley, 36 FCC 2d 127, 128-29, 24 RR 2d 982, 985. On the other hand, *Section 73.315(a)* is controlling, and this Rule demands that 70 dBu service be provided to the community of license.

In the case at hand, Madgekal's consulting engineer has performed no computations for the 70 dBu signal level based on the terrain profiles provided. Despite the fact that the engineering provides no alternative 70 dBu signal level analysis based on terrain profiles, Madgekal's pleading (page 16) states, "severe terrain obstructions render it impossible to deliver a city-grade signal to the community." This statement is factually incorrect as will be shown below and is without support in Madgekal's underlying engineering studies.

The Longley-Rice propagation method, Version 1.2.2, has been accepted by the Commission as an alternate prediction method to be used to accurately determine signal levels over irregular terrain. This is the propagation method described in OET Bulletin No. 69 to be used for analysis of signal levels as set forth in Part 73 of the Rules as implemented by Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268, released February 23, 1998. This method has been used to determine signal levels over The Dalles. *Figure 1* depicts The Dalles corporate boundary, the F(50,50) 70 dBu, and the Longley-Rice 70 dBu signal levels based on the February 1996 allotment coordinates. *Figure 2* depicts The Dalles corporate boundary, the F(50,50) 70 dBu, and the Longley-Rice 70 dBu signal levels based on the April 1998 allotment coordinates. Both sites show 100%, 70 dBu service to The Dalles, using either the F(50,50) curves or the Longley-Rice propagation method. It is noted that in Pathfinder Communications Corporation (WCUZ-FM), 3 FCC Rcd 4146, 4147, Note 3 (1988), the Commission stated that alternative supplemental methods of determining coverage under *Section 73.313(e)* are allowed, and went on to state, ".....at least 50 percent of a community receives a signal level of 70 dBu or greater, is a reasonable and useful standard for determining adequate community coverage when employing alternate supplemental methods in addition to our propagation curves."

NCE CHANNEL AVAILABILITY

The engineering statement accompanying Madgekal's Petition shows that basic allocation studies were performed at the site of FM translator K256AC for Channels 201, 211, 213 and 215 at an ERP of 0.2 kW and HAAT of 561 meters (minimum Class C3 facilities), and the statement concludes that each channel is available. The studies are found in *Exhibit 2*, but are not sufficiently thorough to support the conclusion drawn by Madgekal. Attached as *Figures 3 and 4* are allocation maps for Channels 213 and 215CE, using the K256AC site & RC with an ERP of 0.2 kW as suggested by Madgekal. Both sites violate *Section 73.509* of the Rules in that there is prohibited overlap of contours to existing stations, and they are not, therefore, available. It is noted that contour locations are based on use of 3 second terrain data rather than the 30 second terrain data used by Madgekal, and the more accurate terrain data yields more accurate contour locations.

This leaves Channels 201 and 211C3. These channels are not involved in prohibited contour overlap even at an ERP of 0.63 kW, which is the correct ERP for full Class C3 facilities at the HAAT of 561 meters.

To determine whether Channels 201C3 and 211C3 are actually available for application, it is necessary to determine if they meet the requirements of *Section 73.525* of the Rules concerning protection to television Channel 6. In this case, station KOIN (TV), Portland, Oregon is an affected Channel 6 facility. *Figure 5* is a map depicting the KOIN 47 dBu Grade B contour and the Channel 201C3 48 dBu F(50,10) interference contour. FCC Rule *Section 73.525* allows for a maximum of 4,000 persons inside the area of interference which is the area where interference from Channel 201 would occur within the affected Channel 6 Grade B 47 dBu contour. In this case, an estimate of the total interference to Channel 6 was made by calculating the area and population inside the 48 dBu overlap area within the KOIN 47 dBu contour. The population is 51,177 persons in an area of 7,890 square kilometers.

A similar analysis was performed for Channel 211C3, as shown in *Figure 6*. Here, the population inside the overlap area is 23,695 persons in an area of 1,056 square kilometers. In both cases, the population far exceeds the 4,000 person maximum. Based on the basic analysis above, it is believed that neither Channel