

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

RECEIVED
JUL 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Eatonville, Wenatchee and Moses Lake,
Washington)

)
)
)
)
)
)

MM Docket No. 98-74
RM - 9269

To: Chief, Allocations Branch
Policy & Rules Division
Mass Media Bureau

REPLY COMMENTS

Barbara J. Geesman ("Petitioner"), licensee of Station KKBY-FM, Eatonville, Washington, by her counsel,¹ hereby responds to: (1) the "Joint Counterproposal and Response to Show Cause Order" submitted by Pioneer Broadcasting Company, Inc. ("Pioneer"), Upper Columbia Media Association ("UCMA") and James and Helen Stargel ("Stargel"), ("Joint Counterproposal") and (2) the "Counterproposal to Notice of Proposed Rule Making and Order to Show Cause" submitted by Jeffrey Aaron Bruton ("Bruton"). Petitioner will respond to these counterproposals insofar as they comment on Petitioner's proposal and raise procedural issues. Petitioner reserves its right to address the comparative merits of the two counterproposals should the Commission issue a Public Notice announcing acceptance of these filings. In support hereof, Petitioner states as follows:

1. Please note the change in counsel for purposes of service of documents by the Commission and other parties.

JOINT COUNTERPROPOSAL

1. The Joint Counterproposal claims that Petitioner is “incapable” of reimbursing Pioneer for the reasonable costs of the channel changes to Station KKR(FM), Wenatchee, Washington and KWIQ-FM, Moses Lake, Washington. Pioneer lists the estimated costs it asserts will be necessary for the changes involved and admits that the total costs are “a large sum of money for the small size of the market involved” (Joint Counterproposal at 5). Pioneer alleges that its past experience with Petitioner indicates that Petitioner is “an unreliable source for such reimbursement” (at 5). Pioneer includes a memorandum and declaration concerning certain instances of past failures to make payments by Petitioner and her corporation on a promissory note. In view of this allegation, Pioneer requests that the total amount of estimated expenses (\$283,443.00) be placed in escrow within 14 days of the Commission’s issuance of an order. Otherwise, Pioneer threatens to seek reconsideration.

2. As stated in the attached declaration by Barbara J. Geesman, Pioneer mischaracterizes the events of 1994 and fails to relate relevant circumstances surrounding these events. Rather than litigate the facts that took place in 1994, Petitioner states that it did pay off the note by the due date. Petitioner further states that she has the ability to pay reasonable reimbursement expenses in accordance with Commission requirements. Should the Commission determine that it needs more information relating to the events of 1994, Petitioner will provide the additional information.

3. The Commission has stated on many occasions since Circleville, Ohio, 8 FCC 2d 159 (1967), that it does not expect the parties to reach agreement on the amount of reimbursement prior to the modification of a station license. Rather the parties are expected to negotiate in good faith, subject to Commission review in the event of disagreement. See e.g., Ada, Newcastle and Watonga,

Oklahoma, 11 FCC Rcd 16896 (1996); and Neenah-Menasha, Rhinelander and Rudolph, Wisconsin, 7 FCC Rcd 4594 (1992), recons. denied, 8 FCC Rcd 3050 (1993) (where the Commission refused to require advance payments of reimbursement expenses); Othello, East Wenatchee and Cashmere, Washington and Wallace, Idaho 6 FCC Rcd 6476 (1991) (where the Commission did not require advance payment or escrow). Pioneer has not contacted Petitioner to negotiate and did not provide the list of expenses to Petitioner prior to disclosing them in the counterproposal. It does not appear that Pioneer wants to negotiate although Petitioner stands ready to discuss the list of expenses following a Commission order modifying the Wenatchee and Moses Lake licenses. Therefore, the Commission should allow the parties to negotiate first before becoming involved in the discussions.

BRUTON COUNTERPROPOSAL

4. Bruton has requested the allotment of Channel 283C3 to Warden, Washington, as its first local service. This channel conflicts with the substitution of Channel 285C1 at Moses Lake. Should the Commission decide to place the counterproposal on Public Notice, Petitioner will address the comparative merits at the appropriate time.

5. However, Petitioner has determined that the community of Warden, Washington can obtain a first local service consistent with Petitioner's proposal for Eatonville. Petitioner searched for an alternate channel for Warden and discovered that by having Station KWIQ at Moses Lake change from Channel 262C1 to Channel 285C1, as proposed by Petitioner, Warden can be allotted Channel 263C3. See attached Channel Study from E. Harold Munn, Jr. & Associates, Inc. Petitioner found no other Class C3 channel for Warden. Thus, Petitioner's Eatonville proposal has the added benefit of enabling Warden to have a first local service for which there is an expressed

interest.² Accordingly, the Commission should consider the alternate channel allotment of 263C3 to Warden, Washington to provide a first local service in order to accommodate Petitioner's request to upgrade Station KKBV-FM at Eatonville as proposed.

Respectfully submitted,

BARBARA J. GEESMAN

By: 
Mark N. Lipp

Shook, Hardy & Bacon
1850 K Street, NW
Suite 900
Washington, DC 20036
(202) 261-2045

Her Counsel

July 28, 1998

-
2. Petitioner notes that Channel 263C3 is only possible if Channel 285C1 is substituted at Moses Lake and Channel 262C2 is substituted at Wenatchee. In view of the need for the Moses Lake and Wenatchee channel substitutions, the Commission may require the ultimate permittee of Channel 263C3 at Warden to share in the reimbursement costs for the two stations. See Mayfield and Wickliffe, Kentucky et al., 48 RR 2d 1232 (1981). Nevertheless, Petitioner again states that whether or not the Warden permittee is also obligated to reimburse, Petitioner will reimburse Stations KKRK and KWIQ-FM for their reasonable costs in changing channels.

DECLARATION

I, Barbara J. Geesman, am the licensee of Station KKBV-FM, Eatonville, Washington. Bar-B Broadcasting, Inc. and I did enter into a Promissory Note with Matthew N. Clapp, Jr. dated November 12, 1991. However, Pioneer's counsel mischaracterizes the events of 1994 and fails to disclose relevant facts surrounding negotiations that were taking place at the time. I did pay off the note by its due date. I will be happy to provide the Commission staff with information concerning this matter if it desires. I resent that Pioneer has taken this occasion to engage in disparaging remarks concerning my reliability and financial capability when the FCC has a longstanding policy of requiring the parties to negotiate first and rely on the Commission to resolve disputes as a last resort. But Pioneer has made no attempt to negotiate with me and decided to present its list of expenses to the Commission first.

I hereby state that I have the financial capability to reimburse Pioneer for the reasonable costs of changes required to implement my proposal. I reiterate that I will provide reimbursement as ordered by the Commission. I certify that these statements are true, correct and complete to the best of my knowledge and belief and are made in good faith.


Barbara J. Geesman

E. Harold Munn Jr. & Associates Inc.
P.O. Box 220 - Coldwater MI 49036

Alternate Channel Study
Warden WA

REFERENCE

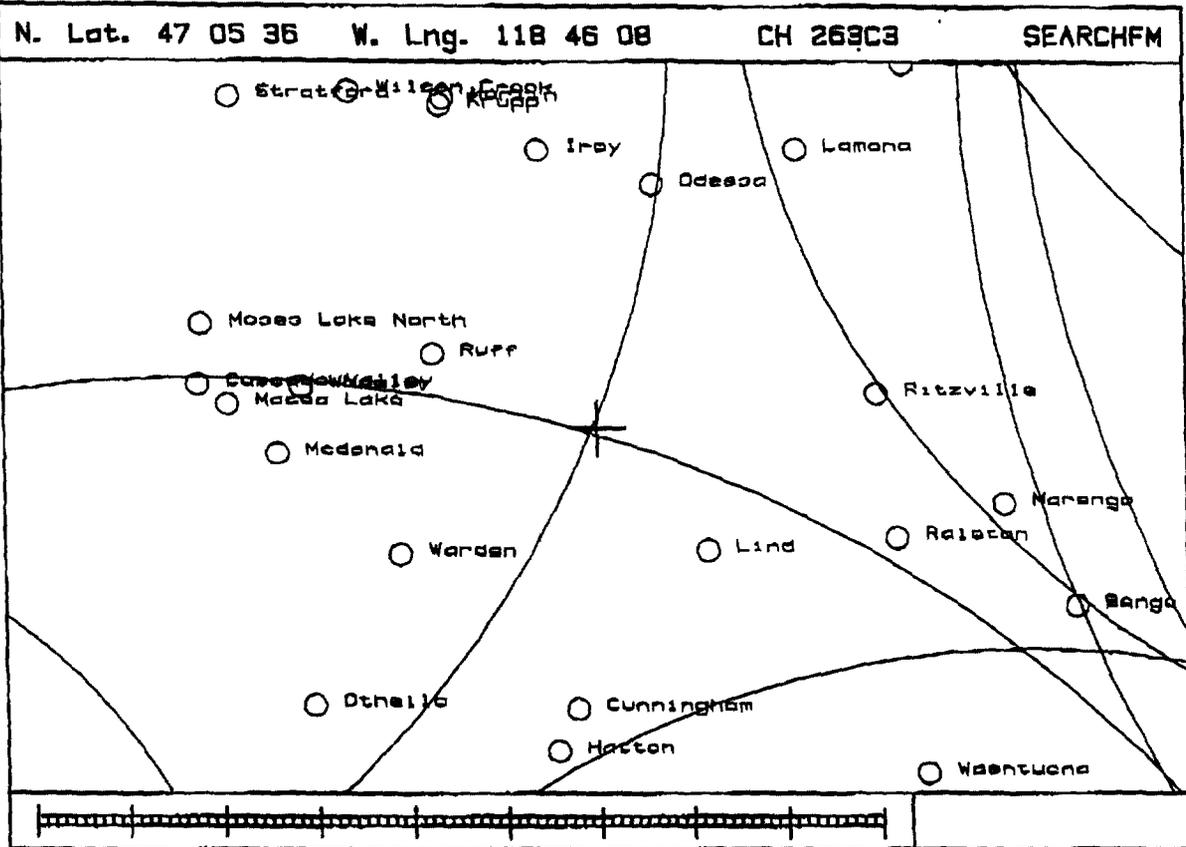
47 05 36 N
118 46 08 W

CLASS = C3
Current Spacings

DISPLAY DATES
DATA 07-15-98
SEARCH 07-24-98

----- Channel 263 - 100.5 MHz -----

| Call | Channel | Location | Dist | Azi | FCC | Margin |
|---|--------------------|--------------------|--------------|----------------|-------|---------|
| N. Lat. | W. Lng. | Power | HAAT | | | |
| KWIQAL AP 47 06 09 | 263C1 119 14 26 | MOSES LAKE CN | WA 35.82 | 271.8 59 M | 211.0 | -175.18 |
| KWIQ Radio, Inc. Alternate 980225 | | | | | | |
| KWIQAL AL 47 29 20 | 262C 119 26 45 | MOSES LAKE C CN | WA 67.50 | 311.0 600 M | 176.0 | -108.50 |
| Pioneer Counter-Proposal 980716 | | | | | | |
| DE262 DE 47 06 09 | 262C1 119 14 26 | Moses Lake C | WA 35.82 | 271.8 0 M | 144.0 | -108.18 |
| Barbara J. Geesman RM9269 980527 | | | | | | |
| KWIOFM LI 47 06 09 | 262C1 119 14 26 | Moses Lake C CN | WA 35.82 | 271.8 59 M | 144.0 | -108.18 |
| KWIQ Radio, Inc. BLH830627AB 970218 | | | | | | |
| AD262 AD 47 28 44 | 262C2 120 12 49 | Wenatchee C | WA 117.40 | 292.0 0 M | 117.0 | 0.40 |
| Barbara J. Geesman RM9269 980617 | | | | | | |
| Proposed as Class B to Canada 980615 | | | | | | |
| KKRVAL AL 47 28 44 | 262C2 120 12 49 | WENATCHEE CN | WA 117.40 | 292.0 403 M | 117.0 | 0.40 |
| Infinity Systems, Inc. (Alt) 980225 | | | | | | |
| AD263 AD 45 51 57 | 263A 119 18 45 | Hermiston C | OR 142.69 | 197.2 0 M | 142.0 | 0.69 |
| Mark Jacky Broadcasting RM9205 980325 | | | | | | |
| KEYFFM CP 47 35 35 | 266C 117 17 46 | Cheney CDVN | WA 124.39 | 62.9 449 M | 96.0 | 28.39 |
| Triathlon Broadcasting of Spo BPH950822IC 980513 | | | | | | |
| Auxiliary facility | | | | | | |
| KEYFFM LI 47 35 35 | 266C 117 17 46 | Cheney C CN | WA 124.39 | 62.9 490 M | 96.0 | 28.39 |
| Triathlon Broadcasting of Spo BLH961001KC 970303 | | | | | | |
| KHSS.C CP 45 59 04 | 264C3 118 10 08 | Walla Walla CN | WA 131.58 | 159.4 419 M | 99.0 | 32.58 |
| KHSS, Inc. BPH960828IE 980625 | | | | | | |



Alternate Channel Study
Warden WA

| Call | CH# | Location | | D-KM | Azi | FCC | Margin |
|--------|-------|-------------|----|--------|-------|-------|--------|
| AD262 | 262C2 | Wenatchee | WA | 117.40 | 292.0 | 117.0 | 0.40 |
| KKRVAL | 262C2 | WENATCHEE | WA | 117.40 | 292.0 | 117.0 | 0.40 |
| AD269 | 269A | Hermiston | OR | 142.68 | 197.2 | 142.0 | 0.68 |
| KEYFFM | 266C | Cheney | WA | 124.40 | 62.9 | 96.0 | 28.40 |
| KEYFFM | 266C | Cheney | WA | 124.40 | 62.9 | 96.0 | 28.40 |
| KHSS.C | 264C3 | Walla Walla | WA | 191.57 | 159.4 | 99.0 | 32.57 |
| DE264 | 264C | Wallace | ID | 219.39 | 77.8 | 176.0 | 43.39 |
| KSIL.C | 264C | Wallace | ID | 227.28 | 75.6 | 176.0 | 51.28 |
| KXLYFM | 260C | Spokane | WA | 155.05 | 52.9 | 96.0 | 59.05 |
| KARYFM | 265C2 | Grandview | WA | 115.89 | 284.8 | 56.0 | 59.89 |
| KIROFM | 264C | Seattle | WA | 248.79 | 281.9 | 176.0 | 70.79 |

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon, LLP, do hereby certify that I have, on this 28th day of July, 1998, sent by first-class U.S. mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

- * Ms. Sharon McDonald
Federal Communications Commission
Mass Media Bureau
2000 M Street, NW
Room 569
Washington, DC 20554

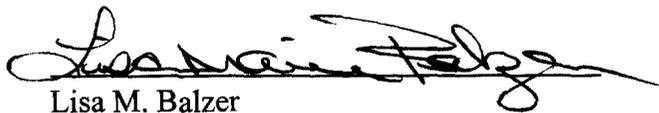
- Mr. Jeffrey Aaron Bruton
P.O. Box 10
Mabton, WA 98935

- Peter A. Casciato, Esq.
Law Offices of Peter A. Casciato
8 California Street
Suite 701
San Francisco, CA 94111
(Counsel to Pioneer Broadcasting Co., Inc.)

- Donald E. Martin, Esq.
Donald E. Martin, P.C.
6060 Hardwick Place
Falls Church, VA 22041
(Counsel to Upper Columbia Media Association)

- James and Helen Stargel
P.O. Box 1740
Oldtown, ID 83822

- * HAND DELIVERED


Lisa M. Balzer