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ANN BAVENDER*
 ANNE GOODWIN CRUMP
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 ROBERT N. FELGAR*
 ERIC FISHMAN
 RICHARD HILDRETH
 FRANK R. JAZZO
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 EUGENE M. LAWSON, JR.
 HARRY C. MARTIN
 GEORGE PETRUTSAS
 LEONARD R. RAISH
 JAMES P. RILEY
 KATHLEEN VICTORY
 HOWARD M. WEISS
 *NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET
 ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

FRANK U. FLETCHER
 (1939-1985)
 ROBERT L. HEALD
 (1956-1983)
 PAUL D.P. SPEARMAN
 (1936-1982)
 FRANK ROBERSON
 (1936-1981)
 RUSSELL ROWELL
 (1948-1977)

RETIREE
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
 INTERGOVERNMENTAL AFFAIRS
 SHELDON J. KRYS
 U. S. AMBASSADOR (ret.)

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AUG 26 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

August 26, 1998

BY HAND DELIVERY

Magalie Roman Salas, Esquire
 Secretary
 Federal Communications Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

Re: MM Docket No. 97-107
 RM-9023
Potts Camp and Saltillo, Mississippi

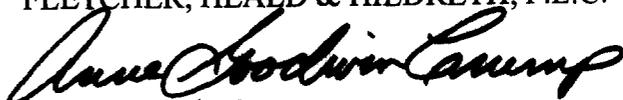
Dear Ms. Salas:

Transmitted herewith, on behalf of Olvie E. Sisk, licensee of Station WCNA(FM), Potts Camp, Mississippi, are an original and four copies of his "Reply to Opposition to Application for Review" with regard to the *Report and Order*, DA 98-1081, released June 19, 1998, in the above-referenced proceeding to reallocate Channel 240C3 from Potts Camp to Saltillo, Mississippi, and modify the license of WCNA(FM) to specify the new community.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
 Counsel for Olvie E. Sisk

Enclosures

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 TABODE



BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments, FM Broadcast Stations.)
(Potts Camp and Saltillo, Mississippi))

MM DOCKET NO. 97-107
RM-9023

Directed to: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Olvie E. Sisk ("Sisk"), licensee of WCNA(FM), which operates on Channel 240C3 at Potts Camp, Mississippi, by his attorneys and pursuant to Section 1.115 of the Commission's Rules, hereby respectfully submits his Reply to the "Opposition to Application for Review" filed by Broadcasters & Publishers, Inc. ("BPI"), on August 13, 1998, with regard to the *Report and Order*, DA 98-1083, released June 19, 1998 ("*Report and Order*"), in the above-referenced proceeding. With respect thereto, the following is stated:

1. As an initial procedural matter, it should be noted that BPI's Opposition was filed three days late and therefore should be dismissed without consideration. Section 1.115(d) of the Commission's Rules clearly provides that oppositions to applications for review "shall be filed within 15 days after the application for review is filed." 47 C.F.R. §1.115(d). Sisk's Application for Review was filed on July 24, 1998. The fifteenth day after that date was August 8, 1998. Since August 8 fell on a Saturday, pursuant to Section 1.4(j) of the Commission's Rules, the required filing date became August 10, 1998. The Opposition was not filed until August 13, 1998. While in some instances, the Commission's Rules provide an additional three days for filing responses to documents served by mail, that provision applies only when the filing period

is ten days or less and therefore is inapplicable in this instance. 47 C.F.R. §1.4(h). Thus, BPI's Opposition was late-filed and should not be considered by the Commission.

2. The above-referenced proceeding deals with the proposed reallocation of Channel 240C3 from Potts Camp to Saltillo, Mississippi, and the modification of Station WCNA(FM)'s license accordingly. In Comments filed in the proceeding, Sisk demonstrated that the proposed reallocation would provide Saltillo with its first local transmission service and would greatly increase the population served by WCNA(FM), and that the community of Potts Camp had declined to a point at which its continued viability as a community is in doubt. Broadcasters & Publishers, Inc. filed a counterproposal which opposed the proposed reallocation. The Commission's *Report and Order*, however, denied the proposed reallocation and modification of license. Despite the fact that, pursuant to the FM allotment priorities, a comparison between Potts Camp and Saltillo normally would favor Saltillo as the community to receive a first local service, the Commission's staff found that the public interest benefits of the reallocation to Saltillo did not outweigh the loss of a transmission service to Potts Camp.

3. In his Application for Review, Sisk showed that the community of Potts Camp has declined even further since Sisk submitted his Comments in the proceeding. Further, as set forth by Sisk, regardless of the outcome of this proceeding, Potts Camp will very likely lose the service of WCNA(FM). If Sisk is unable to relocate WCNA(FM) to Saltillo, the station will be unlikely to be able to continue operating at its present location due to its ever-mounting financial losses. On the other hand, if WCNA(FM) can change its community of license, while Potts Camp will lose its local transmission service, the public at large will benefit through the expansion of WCNA(FM)'s coverage area and the addition of a first local transmission service at

Saltillo.

4. BPI now argues that the decision in this proceeding should not be based upon financial interests but public interest factors, and that the allotment of a first local service to Saltillo should not cost Potts Camp its local transmission service. Sisk could not agree more that the decision in this case should be based on public interest factors. Sisk has amply demonstrated that the public interest would be best served by the reallocation proposed in the instant proceeding. As the result of the proposed reallocation, the thriving and growing community of Saltillo would gain a first local transmission service, and the number of persons served by WCNA(FM) would be greatly increased. Both of these matters are recognized public interest factors favoring the reallocation.

5. Moreover, BPI has apparently ignored Sisk's unequivocal showing that, **no matter what the outcome of this proceeding**, Potts Camp **will** very likely lose the local transmission service of WCNA(FM). Sisk is not seeking the reallocation simply to provide a rosier outlook for his returns on investment. On the contrary, the proposed reallocation is a matter of survival for WCNA(FM). The station simply cannot survive as a Potts Camp station at its present location. As set forth in Sisk's Application for Review, the community of Potts Camp provides no support whatsoever for WCNA(FM), whether in terms of purchasing advertising or listening to the station. Sisk cannot continue to operate WCNA(FM) on this basis. Absent the proposed reallocation, the station likely will fall silent. Potts Camp then would lose its only local transmission service without any countervailing public interest benefits whatsoever.

6. Moreover, BPI's belated filing of a petition for rule making to amend the FM Table of Allotments to allot Channel 275C3 to Saltillo is no answer. As background, it must be recalled that BPI is the licensee of a station which would be likely to compete with WCNA(FM) after a

change in community of license to Saltillo. Clearly, BPI is anxious to avoid further competition in the market and is availing itself of all means possible to accomplish its goal. On May 19, 1997, BPI submitted comments and a counterproposal in this proceeding. This filing also proposed the allotment of Channel 275C3 to Saltillo but was found unacceptable as a counterproposal. BPI then waited until August 12, 1998, two days after the due date for oppositions to Sisk's application for review, before it took any further action to seek an allotment at Saltillo. This lengthy delay, coupled with BPI's obvious anticompetitive motive, raises serious questions as to the sincerity of BPI's interest in Saltillo.

7. Further, pending the final outcome of this proceeding, BPI's petition for rule making cannot be considered as a proposal for a first local aural transmission at Saltillo, but must rather be treated as a proposal for a second local service there. Sisk's proposal clearly was filed long before that of BPI. Sisk submitted his Petition for Rule Making on January 16, 1997, over one and one-half years prior to BPI's petition. Given the substantial time that elapsed prior to BPI's submission, BPI's petition must be considered as one seeking an allotment for a second local transmission service at Saltillo.

8. In any event, it is clear that BPI's proposal to allot a channel to Saltillo so that someday, in the dim future, a station might have a chance to be built there is hardly the equivalent of Sisk's proposal to provide a first transmission service to Saltillo in the immediate future. The process commenced by BPI is necessarily time-consuming and filled with uncertainties. First, the Commission must find BPI's petition to be satisfactory and issue a notice of proposed rule making. That notice will provide a period of time for other parties to file comments and counterproposals. During that time, it is possible that another party might

advance a mutually exclusive proposal which might be adopted in preference to the proposed Saltillo allotment. Even if the Commission were to conclude that a channel should be allotted to Saltillo, that decision would not itself bring a station to the community. Next, the Commission must open a window for applications for construction permit to be filed. Should more than one applicant file for the facility, the Commission would be required to conduct an auction to determine the likely permittee. The Commission must then complete processing of the auction winner's application and issue a construction permit. Only then could anyone go forward with construction of a new Saltillo station. Given the delays inherent in the allotment process, as well as the recency of the adoption of the rules governing auctions in the broadcast service and the backlog of long-pending applications, it is clear that the completion of the entire process would consume a substantial period of time.

9. In contrast, if the proposed reallocation in the instant proceeding were approved, all that would be required is for Sisk to file an application for construction permit for minor modification of the license for WCNA(FM). Such an application would not involve questions of mutual exclusivity, and the processing of minor modification applications generally can be completed in a matter of a few months. Sisk has already demonstrated his commitment to moving forward with the relocation of WCNA(FM) to Saltillo. As a growing and thriving community, Saltillo is in need of its own local aural transmission service. If the reallocation proposed herein is approved, it is possible that Saltillo could have that service within a matter of months, not years. At the same time, an increased number of persons would be served by WCNA(FM).

10. Thus, for Saltillo, the choices are whether to re-allot Channel 240C3 to that

community at this time, or to await a speculative possibility of a future allotment. If the Commission denies the instant reallocation request in light of the pending petition for rule making to allot a channel to Saltillo, there will be no net increase, but rather a decrease in service. As set forth above, absent the proposed change in community of license, WCNA(FM) very likely will go dark. At that point, instead of having an operating station at Saltillo with a proposal to add a second channel, there will be a vacant allotment at Potts Camp and a proposal to allot a channel to Saltillo. Accordingly, the denial of the proposed reallocation would lead to the net loss of one station.

11. In these circumstances, the public interest benefits of the proposed reallocation overwhelmingly outweigh any hypothetical reliance upon WCNA(FM) by local residents. In the instant case, the Commission is faced with a station which will be forced to go dark if it cannot relocate. The entire current service area then will lose service from the station. Saltillo is a prospering and growing community, while Potts Camp is dying. The proposed reallocation would allow WCNA(FM) to serve a vastly greater population, with a 79 percent increase in the number of persons served. Therefore, the proposed reallocation would result in a more efficient and equitable distribution of frequencies. This result clearly would serve the public interest.

WHEREFORE, the premises considered, Sisk respectfully requests that Channel 240C3 be reallocated from Potts Camp to Saltillo, Mississippi, and that the license for WCNA(FM) be modified to specify operation at Saltillo, Mississippi.

Respectfully submitted,

OLVIE E. SISK

By:



Frank R. Jazzo
Anne Goodwin Crump

His Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

August 26, 1998

agc/#108/reopp.gs

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Reply to Opposition to Application for Review" was sent this 26th day of August, 1998, by first-class United States mail, postage prepaid to:

Roy J. Stewart, Esq.*
Chief, Mass Media Bureau
Federal Communications Commission
Room 314, MS-1800
1919 M Street, N.W.
Washington, D.C. 20554

Mr. John A. Karousos*
Mass Media Bureau
Federal Communications Commission
Room 554
2000 M Street, N.W.
Washington, D.C. 20554

Erwin G. Krasnow, Esquire
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
Suite 700
901 15th Street, N.W.
Washington, D.C. 20005

*By Hand Delivery


Barbara Lyle