

September 15th, 2015

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Accepted / Filed

SEP 16 2015

Federal Communications Commission
Office of the Secretary

NPRM MB Doc 15-167 Grant, OK
Reply Comments In Support

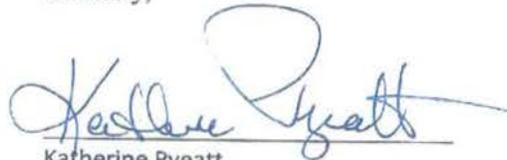
Please accept these reply comments in MB Docket 15-167. At the time of writing this the FCC has apparently not finished its move of its various computer systems. Specifically, the ECFS does not appear to be working properly. The system fails to display Comments already on file. At this point, it is not known if the system will accept electronic submissions.

As a safe guard, this filing will be sent via e-mail to the FCC contact person listed in the NPRM, Mr. Andrew Rhodes. In addition, a copy is being sent to James Bradshaw, Audio Division.

I certify that e-mail copies are being sent to counsel for Liberman Broadcasting and to Lee Anderson, Member, Southeastern Oklahoma Radio LLC.

I further certify that the address listed below is my correct address.

Sincerely,



Katherine Pyeatt
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(214) 674-1752
Katcast2@aol.com

DOCKET FILE COPY ORIGINAL

cc: Andrew Rhodes, FCC
James Bradshaw, FCC
Mark Lipp, Esq.
Lee Anderson, SOR

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Application of:)	
)	
Amendment of Section 73.202(b))	
FM Table of Allotments)	MB Docket: 15-167 (15-805)
(286A - Grant, Oklahoma))	RM- 11751
)	
LIBERMAN BROADCASTING OF)	Application & Show Cause
DALLAS LICENSEE LLC)	
For a Construction Permit to Upgrade to Class C0)	BPH-20141028AAK
KZMP-FM Ch. 285C0 - Pilot Point, TX)	FCC Facility ID: 15854
)	
)	
SOUTHEAST OKLAHOMA RADIO, LLC)	Counterproposal
KTMC-FM Ch. 286A)	
Move from McAlester to Krebs, Oklahoma)	Accepted / Filed
)	
)	SEP 16 2015
To: Office of the Secretary		
Attn: The Chief, Audio Division, Media Bureau		Federal Communications Commission Office of the Secretary

REPLY COMMENTS

Katherine Pyeatt ("Pyeatt") herein files Reply Comments to the NPRM (Docket 15-167) to Allot Ch. 286A to Grant, OK, as a first aural service (note: 2nd Public Notice indicates 15-805). This NPRM is opposed by Liberman Broadcasting of Dallas Licensee ("Liberman"), licensee of KZMP-FM Ch. 285C1 at Pilot Point, TX. Liberman has also filed an opposition to the Informal Objection filed by Pyeatt against KZMP-FM's pending 301 application (BPH-20141028AAK) which seeks a third CP to operate KZMP-FM with facilities that qualify as a Class C0 on Ch. 285C0. As part of the Grant NPRM, KZMP-FM is under a show cause why its facility should not be forced to downgrade to a **Class C1** facility. In addition, a Counterproposal was filed by Southeastern Oklahoma Radio LLC ("SOR"), licensee of KTMC-FM, to reallocate Ch. 286A from McAlester to Krebs, OK, as a first aural service.

OPPOSITION BY LIBERMAN

Liberman is under a **Show Cause** to justify why its facility should not be downgraded to a Class C1 for its repeated failure to implement the two previous CPs it received specifying Class C0 facilities. Liberman has failed to explain why it mis-led the FCC regarding its ability to construct at a specific height on an existing tower. Liberman's CP was based upon the presumed replacement of an existing FM antenna which is currently utilized by two other FM stations (not under Liberman's control). It was only after the proposal to allot Ch. 286A to Grant, OK, that Liberman disclosed that **it was never able to obtain permission** of both stations to replace their joint FM antenna.

Liberman continues to lack candor with respect to its ability to complete the upgrade of KZMP as it certified in its first of three KZMP C0 applications in November 2007. Liberman has gone to great lengths to document its vast experience in broadcasting. However, Liberman has still not explained why it filed the KZMP applications knowing full & well that it "lacked" reasonable assurance of site availability (including permission for use of a shared antenna which is critical to implementation of its application) as required by the rules. Liberman failed to disclose this fatal fact in all three of its applications filed to date. Even now, **more than 10 months after filing its most recent application**, Liberman has failed to amend its application to formally disclose it still lacks reasonable assurance.

Liberman claims "**Circumstances Beyond KZMP's Control Have Delayed Build-out Of The Upgrade**" (top of page 4 of its comments in this NPRM). However, this is **blatantly not correct**. Liberman picked this site Not Once, Not Twice but Three Times knowing it did not have permission to replace the existing joint antenna used & owned by two other licensed FM stations. It not only did not have permission but its repeated requests **fell on deaf ears**. To the contrary, this action was **TOTALLY UNDER THE CONTROL OF LIBERMAN**. If an Auction high bidder, were to request tolling under these circumstances there is little doubt that tolling would be **denied**.

In its response to the show cause, Liberman only says that “recent discussions **have been more positive** and the parties are **ready to proceed**; as a result, LBDL refilled the application”. One must assume that this **non-committal assurance** of negotiations is meant to explain (after-the-fact) how Liberman could for a third time re-file the same flawed application asking for yet another 3 years to construct – yielding a total of **18 years of spectrum warehousing**. Even now more than 10 months after filing its application, Liberman has not amended its pending application to document the existence of reasonable assurance to share an antenna with the other two stations. One must assume, negotiations are still on-going.

Through a loop-hole in allotment policy, Liberman claims that its initial CP authorizing an upgrade **guaranteed** it would **always be entitled** to Class C0 protection, regardless of whether it ever built Class C0 facilities and apparently, **regardless of whether it obtained that CP without the requisite reasonable assurance**. As KZMP has pointed out, its currently pending application (BPH-20141028AAK) **does not request an one-step upgrade**, as did its previous two applications, because of this guarantee to always be a Class C0.

The FCC should not reward Liberman for repeatedly flaunting the rules. **KZMP should be re-classified as a Class C1**. If the FCC decides to process the KZMP application, it must require Liberman to amend its application to indicate it is indeed a **one-step upgrade** to Class C0 while also requiring it to demonstrate a properly spaced reference point.

TABLE OF ALLOTMENTS **ONLY CONTAINS VACANT ALLOTMENTS**

On November 29, 2006, when the FCC modified its rules (MB 05-210) the FM Table of Allotments now **only contain Vacant Allotments**. The Table no longer includes the City or Channel of any authorized facility held by a Licensee or Permittee. So the traditional boilerplate statements still being included on CPs **have little purpose or meaning**.

Because of the design of CDBS, once a CP is expired, a copy of the actual CP authorization is **no longer available for public viewing**. In addition, CDBS contains no indication that the current license was modified to a Class C0. The only protection afforded in CDBS is to the Class C1 License and to the Class C0 CP which was expired when the RM was filed.

Liberman was also apparently unaware of the so called license modification to Class C0 since its 2nd CP application (BPH-20110928AJC) still contained a request a Class C0 Upgrade. In an obvious attempt to circumvent competing applications, Liberman filed its 2nd CP app **more than 2 months prior to the existing CP expiration**. It should be noted that now the **FCC staff no longer includes** the statements concerning the modification of the Table or the modification of the existing license. It was only in this 3rd CP application (BPH-20141028AAK) that Liberman **is now claiming** that it has been a Class C0 facility since the grant date of its 1st CP - 12/03/2008.

It should be noted that the copy of the CP provided by Liberman (as do all other CPs issued for FM radio stations) also contained the following statement:

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598

Pyeatt does not accept the premise that original 2007 CP, which has now been expired for nearly 5-1/2 years, is still able to provide KZMP-FM the protection afforded a Class C0 facility **for all eternity** as Liberman believes. To accept this as Commission policy is a **direct contradiction** of the above policy of automatic forfeiture.

MX COUNTERPROPOSAL - ALLOT CH. 286A at KREBS, OK

A Counterproposal was filed by Southeastern Oklahoma Radio LLC ("SOR"), licensee of KTMC-FM, to reallocate Ch. 286A from McAlester to Krebs, OK, as a first aural service. It should be understood that the community of Krebs is immediately adjacent to the community of McAlester. While KTMC-FM is currently short spaced under Section 73.215, it was able to demonstrate the existence of a properly spaced reference point for allotment purposes (which is MX to the NPRM for Ch. 286A at Grant, OK). SOR has indicated its intentions to remain its existing licensed site despite the fact that Section 73.215 restricts its equivalent "Omni" ERP to less than 62% of a normal 6 kW Class A facility. Thus, adoption of SOR's proposal provides no gain or loss in existing FM service. Whereas the Grant proposal will provide an additional FM service.

It should be noted that only the requirement to have a properly spaced reference point for allotment purposes makes the KTMC counterproposal MX with the NPRM to allot Ch. 286A as a new first service to Grant, OK. The site at which KTMC-FM plans to continue to operate from is not MX with the NPRM at Grant, thus, Grant can be allotted as fully spaced. Had KTMC filed its proposal prior to the filing of the NPRM at Grant, it would not be a barrier to the adoption of the Grant NPRM. In addition, had KTMC been a grandfathered short spaced facility rather than a Section 73.215 short spaced facility, no allotment reference point would be required.

Pyeatt requests that the FCC first grant the request to move to Krebs and then grant the NPRM to allot Ch. 286A at Grant, OK. In the alternative, Pyeatt requests that KTMC be granted a waiver from having to have a properly spaced reference point since the public interest would be served by an actual increase in the number of

commercial FM facilities and the allotment of a first service to two communities (Krebs & Grant, OK).

ALTERNATE - ALLOT CH. 285A at KREBS, OK

Figure 1 is a FM Channel Study demonstrating that Ch. 285A can be allotted to Krebs, OK, at the following special reference point: **34-58-32 / 95-36-10** which is located close enough to totally encompass Krebs within the 16 km allotment circle. Use of alternate Ch. 285A at Krebs would also permit the simultaneous allotment of Ch. 286A at Grant, OK. This alternate proposal assumes that **KZMP will be forcibly downgraded to a Class C1 facility**. The licensed site of KTMC will have to be modified to comply with section 73.215 (the Lic site is only a preference and not considered in allotment evaluations).

WHY THE SHOW CAUSE

The FCC issued a **Show Cause** to KZMP-FM as to why its is not **forced to remain a Class C1 facility** since that is more consistent with its actual facilities it has operated with since 1999 - this assumes the modification of license to Class C0 is still valid. Based upon the revelations contained in the Liberman Oppositions (concerning its failure to secure permission to share the existing FM antenna), the FCC should order Liberman to explain why it has filed **three** CP applications when it admittedly did not have the requisite **Reasonable Site Assurance** (apps filed in 2007, 2011 & 2014). Liberman should be required to explain why it **Willfully & Repeatedly** failed to apprise the FCC that **it did not have permission** to share the existing FM antenna used by two other FM licensees. Liberman should be required to explain why even now KZMP-FM has **failed to formally amend** its pending application (BPH-20141028AAK) to explain why during the previous 7 years it failed to construct. Liberman should also explain why these repeated failures **do not rise to the level of Lack of Candor**.

Reasonable Site Assurance - when an applicant is proposing to utilize an existing tower it must not only have permission to mount its antenna on that tower but also to locate its antenna **at the height specified** in its application. In this case, where KZMP-FM proposes **to share an existing FM antenna** it must also have permission to do so - which Liberman has now for the first time disclosed it does not have.

The continuing requirement for reasonable site assurance is explained in an MO&O involving the reconsideration of CP issued to an FM translator in Manahawkin, NJ. At the bottom of para-5 on page 3, it states "A mere possibility that the site will be available is not sufficient". In para-8 on page 3 it goes on to state that "... an applicant will not be permitted to amend where it did not have the requisite reasonable assurance to begin with...". In this case, the FCC reversed itself and rescinded the CP for a new FM translator strictly based upon lack of Reasonable Site Assurance. Based upon this previous decision, the Staff should consider the **original CP as null and void** because **Liberman failed to have the requisite Reasonable Site Assurance**. Its inability to construct prior to the CP expiration was no beyond its control - **Liberman chose to share an antenna it did not own or control**.

Spectrum Warehousing - the Commission has repeatedly gone on the record against any of its licensee warehousing spectrum. In the Matter of 1998 Biennial Regulatory Review, Second Report and Order, 15 FCC Rcd 21649, 21665 (2000). This order in part permitted the **forced downgrade** to the newly created Class C0 of any commercial Class C FM station operating with facilities below the equivalent of 100 kW at 451 m HAAT. In that order the Commission cautioned FM stations with Class C licenses against "... abuse of our general broadcast construction policies in the context of this reclassification procedure."

Pyeatt believes that the filing for a third CP when failing to construct during the **prior 7 years** afforded by the two previously granted CPs is a **similar abuse** the Commission cautioned sub-standard Class C stations about. **Liberma must not be rewarded with 3 additional years for its attempts to fly under the radar.**

When the FCC **formally eliminated the extension of CPs**, it did so because there was **widespread abuse** of routinely obtaining multiple extensions which delayed implementation of both new & modified aural services to the public.

Today's **Auction Winners**, which in many instances are "new" minority entrants into broadcasting, are **given only one CP** with a firm 3 year expiration. Failure to timely construct **results in cancellation** despite the fact that Auction Winners paid the US Treasury money and in some cases a significant amount of money for the opportunity to construct.

While **existing seasoned broadcasters**, like Liberman, are permitted an **unlimited number of CPs** to modify their facilities despite the fact that their experience in broadcast operations make them the **best equipped** to complete construction within the initial 3 year period.

Certainly, the FCC does not want the **public perception** to be that an extremely strict construction standard **is applied only to** Auction Winners because, upon cancellation of the CP, the FCC can again auction off the same allotment to the next highest bidder.

Ashbacker Policy - requires that other potential applicants be permitted to compete for spectrum. Based upon the June 4, 2014, Letter from the FCC (Mr. Doyle, DA 14-774) to

WEMC in Harrisonburg, VA, it is believed that a **one day window exists** upon the expiration or cancellation of a CP for minor modification of a licensed facility so as to comply with Ashbacker. In other words an existing facility cannot continually reapply for a CP without “some” risk of a competing mutually exclusive application. The letter states this one day window policy of the day after CP expiration is to comply with Ashbacker and to **deter spectrum warehousing**.

Pyeatt believes that the expiration of the KZMP-FM CP similarly opened such a one day window and thus, this RM petition for a First Aural Service at Grant, OK, is **timely filed**.

* * * * *

In an attempt to smokescreen the problems with its own application, Liberman has also made distorted & untrue allegations concerning the credibility of Pyeatt to follow through on the required commitment to participate in the auction and then if the High Bidder apply for a CP, then to timely construct and then to operate. So as to keep the focus on **Liberman’s abuse of the CP process** the reply to Pyeatt’s credibility allegations are fully refuted in **attachment A** to this filing.

SUMMARY

Pyeatt requests that the pending application for Class C0 facilities by KZMP-FM be declared a **one-step upgrade** and that it be **denied** because it fails to provide a properly spaced Class C0 reference point and is MX with this NPRM to allot Ch. 286A to Grant, OK. The **FCC should investigate** the circumstances surrounding Liberman’s failure to disclose that it Willfully & Knowingly filed three applications for a CP **while not having** the requisite Reasonable Site Assurance. The FCC should issue a Public Notice reminding the public what is expected.

A Counterproposal was filed by Southeastern Oklahoma Radio LLC ("SOR"), licensee of KTMC-FM, to reallocate Ch. 286A from McAlester to Krebs, OK, as a first aural service. Substitution of **alternate Ch. 285A** at Krebs would also permit the simultaneous allotment of Ch. 286A at Grant, OK. This alternate proposal assumes that **KZMP will be forcibly downgraded to a Class C1 facility.**

If allotted, I pledge to participate in the auction process for this allotment.

I, Katherine Pyeatt do hereby certify that a true copy of this informal objection is being sent via e-mail this 31st day of December 2014, to KZMP's attorney and that the address at the bottom is my correct address.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I also state that the address given below is my correct address. I declare under penalty of perjury that the foregoing is true and correct.

September 15, 2015

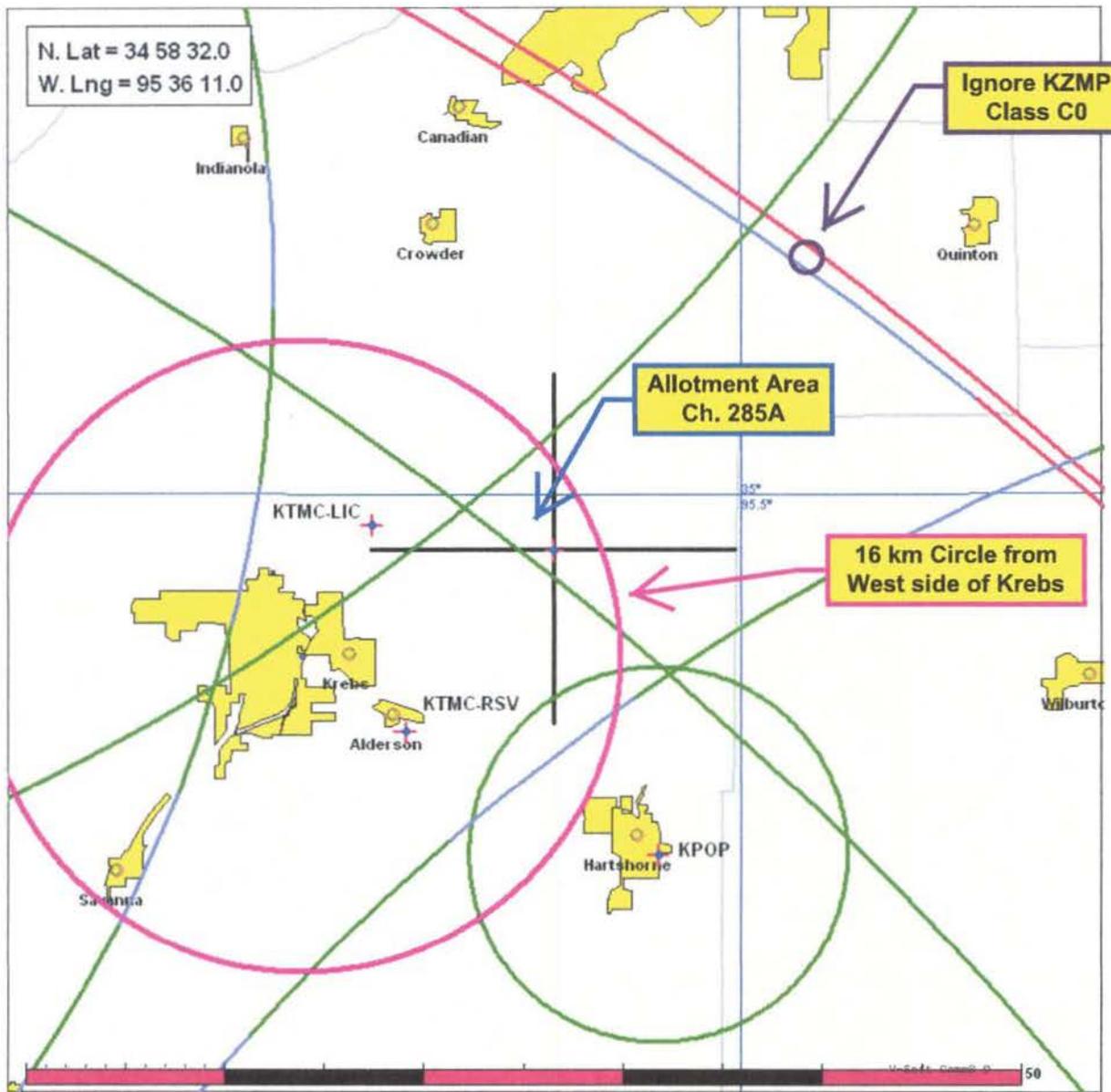
/s/ Katherine Pyeatt

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CH 285 A 104.9 MHz

Current Spacings to 3rd Adj.

Southeastern Oklahoma Radio, Llc



Data Date:09-15-15 Job Date:09-15-15

Call	CH#	Type	Location		Azi	D-KM	FCC	Margin	
KTMC-LIC	286A	LIC-N	Mcalester	OK	278.0	9.19	71.5		Self
KTMC-RSV	286A	RSV-A	Krebs	OK	218.8	11.84	71.5		Self
KZMP-FM	285C0	RSV-A	Pilot Point	TX	216.8	194.54	214.5	-20.0	Ignor
KZMP-FM.A	285C0	APP-N	Pilot Point	TX	215.6	195.60	214.5	-18.9	Ignor
KZMP-FM	285C1	LIC	Pilot Point	TX	218.8	200.62	199.5	1.1	Lic
KREK	285A	LIC	Bristow	OK	319.5	118.96	114.5	4.5	
KPOP.C	232A	CP	Hartshorne	OK	161.2	16.34	9.5	6.8	
KIBE.C	285A	CP -Z	Broken Bow	OK	145.4	123.01	114.5	8.5	
KSLE	284A	LIC-N	Wewoka	OK	278.9	86.59	71.5	15.1	
KQBK	284C2	LIC	Booneville	AR	79.8	136.41	105.5	30.9	
KXFC	288C3	LIC	Coalgate	OK	246.7	78.24	41.5	36.7	

FIGURE 1 - FM CHANNEL STUDY - 285A
Alternate Channel for Krebs, OK

Kathy Pyeatt - Reply Comments Doc 15-167 - Grant, OK
 September 2015



ATTACHMENT A
REBUTTAL TO LIBERMAN'S CLAIMS
REGARDING KATHERINE PYEATT

Since 1/19/2007, I have filed fourteen Petitions for Rule Making proposing new FM allotments. Seven of those fourteen petitions were granted and have gone to public auction.¹ Consistent with my certifications I was an active bidder on all seven FCC Auction allotments and the High Bidder on two, Markham, Texas and Midway, Texas. Markham, Texas was granted a construction permit and subsequently sold. Midway, Texas was purchased in the just concluded FCC Auction 98 and I am in the process of submitting my FCC Form 301.

In Liberman's **Opposition to Informal Objection** and again in their recently filed **Response to Order to Show Cause**, they state incorrectly that I failed to file an application for channel 265A/Elkhart, Texas which I purchased in FCC Auction 91 for \$27,950. Channel 265A at Elkhart, Texas was moved to Wheelock, Texas and granted a CP (BNPH-20110622AAD) which expires on 4/17/2015. Subsequently, a sale of the CP to Bryan Broadcasting was consummated on 7/22/2014.

¹ Dilly, TX; Harper, TX; Markham, TX; Batesville, TX; Kingsland, TX; Midway, TX; and Moran, TX.