

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C.

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JAN 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-179
Table of Allotments)	RM-9334
FM Broadcast Station)	
(Oraibi and Leupp, Arizona))	

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

MOTION TO STRIKE REPLY COMMENTS

Oraibi Media Association ("OMA"), permittee of FM radio broadcast station KBDT, Oraibi, Arizona ("KBDT"), and by its attorneys, hereby requests that the Commission dismiss the reply comments filed by Guyann Corporation ("Guyann") in opposition to the Commission's Notice of Proposed Rule Making ("NPRM") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 255C from Oraibi, Arizona to Leupp, Arizona. As shown below, Guyann's comments are not reply comments, doing nothing to refute Oraibi's showing that Leupp is a community independent from Flagstaff and that the public interest would be served by providing Leupp with its first local service. Therefore, Guyann's reply should be promptly dismissed, and OMA's petition granted, so that Channel 255C is reallocated to Leupp, Arizona and the license for KBDT(FM) is modified accordingly.

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ARGUMENT

I. Guyann Failed to Properly File Comments in This Matter

Although Guyann purports to be opposing OMA's Comments in the above-referenced matter, its reply is only a regurgitation of the issues set forth by the Commission in the NPRM, namely, whether the public interest would benefit from a reallocation of KBDT from Oraibi to Leupp. It provides no new facts that refute anything set forth by OMA in its Comments. OMA, in its Comments, provided information on Leupp pursuant to a Tuck analysis,¹ demonstrating that Leupp is independent from the Flagstaff Urbanized Area, and is therefore deserving of a first local service preference. OMA also showed the public interest benefits this reallocation would provide to not only the Leupp community but to the Navajo Nation in general. Guyann fails to address any of these points

The purpose of reply comments is to address issues raised in any filed comments. See 47 C.F.R. § 1.415(c). This Guyann did not do, merely making blanket statements that had already been made by the Commission. If Guyann wanted to express its support for the issues raised by the Commission concerning Leupp and Oraibi, it should have done so during the initial comment period. By failing to do so, it missed its opportunity for comment. Therefore, Guyann's reply comments should promptly be dismissed.

II. Guyann's Fails to Provide any Factual Support for its Argument

Assuming Guyann's reply comments are accepted, Guyann's only argument as to why a reallocation of KBDT would not serve the public interest is something that is already agreed upon -- KBDT provides a 70 dBu signal to Leupp from its current Oraibi transmitter site, and therefore no change in the community of license is necessary. OMA noted that even though this

¹Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

was true, Leupp has more commercial establishments, community functions, and a degree of independent governing authority that are not present in Oraibi, indicating Leupp is more deserving of a local service.² OMA included in its comments letters from members of the Leupp community highlighting their desire to have a local station that would provide an otherwise unavailable broadcast voice to the community. OMA referenced the number of residents that work in the Leupp community, the number of commercial establishments, health facilities, and other municipal services that provide service only to Leupp, and the perception of the Leupp population that their community is independent from Flagstaff. Guyann did not even mention OMA's showing, and offered no evidence to prove that Leupp is not deserving of such a local service.

III. Guyann's Comments are Entirely Speculative

In its Comments, OMA reiterated its intent to construct and operate a station that will provide coverage and service to Leupp, Arizona. This commitment, coupled with the showing that Leupp is a community deserving of a first local service, is all that is necessary for the allotment to be made. As OMA has met all requirements of the rules, and in light of the compelling evidence offered by OMA that shows how the public interest would be benefitted by a relocation of KBDT, Guyann's reply comments should be dismissed.

²Guyann makes the erroneous assumption that KBDT was initially allotted to Oraibi to serve a Hopi population in the area. Instead, as shown by OMA, the station was allotted as part of Docket 80-90's one-time 689 channel allotment proceeding, see 50 Fed. Reg. 3514 (1995), without any explanation given for the action.

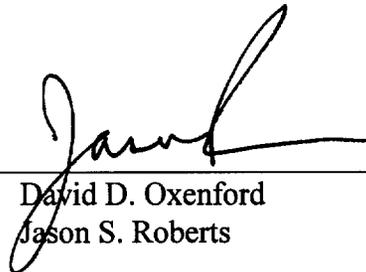
CONCLUSION

For the foregoing reasons, Oraibi Media Association respectfully requests that the Commission strike the Reply Comments filed by Guyann Corporation, and that it reallocate Channel 255C from Oraibi, Arizona to Leupp, Arizona and modify the license of radio station KBDT(FM) accordingly.

Respectfully submitted,

ORAIBI MEDIA ASSOCIATION

By: _____



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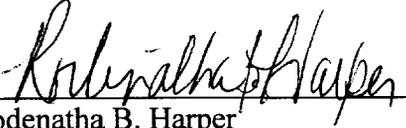
CERTIFICATE OF SERVICE

I, Rodenatha B. Harper, do hereby certify that I have this 26th day of January, 1999,
mailed by first-class United States mail, postage prepaid, or was hand-delivered* copies of the
foregoing **“MOTION TO STRIKE REPLY COMMENTS”** to the following:

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