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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-218
Table of Allotments,	)	RM-9388
FM Broadcast Stations.	)	
(Peterstown, West Virginia)	)	

To: Chief, Mass Media Bureau

OPPOSITION TO MOTION TO ACCEPT LATE-FILED PLEADING

AND OPPOSITION TO COMMENTS

Bible Radio Broadcasters ("Bible"), by its attorney, respectfully opposes the Motion to Accept Late-Filed Pleading, filed April 6, 1999, by Equus Communications, Inc. ("Equus"), in the above-captioned proceeding. In support thereof, the following is shown.

In reaction to Bible's petition for rule making, the Commission released its Notice of Proposed Rule Making ("NPRM") on December 4, 1998. Therein, it stated that comments on the proposal would be due no later than January 25, 1999, with reply comments by February 9, 1999. Bible supported grant of its proposal in its comments, which were the only comments filed by the deadline.

Equus now seeks to file comments in this proceeding well over two months late, in violation of Section 1.415(d) of the Commission's rules.[1] There is absolutely no basis to grant Equus' motion. The Commission's NPRM clearly specified dates for comments. Equus does not contend that the NPRM was improperly

[1] Section 1.415(d), which addresses comments in rulemaking proceedings, states "No additional comments may be filed unless specifically requested or authorized by the Commission."

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released, or that there was any procedural defect which would nullify the comment deadline. Equus must be considered to have received notice of this proceeding by release of the NPRM. As the Commission stated when faced with late-filed comments in a proceeding to amend Section 73.202(b):

> The purpose of the rule is that there must be a point in time when the record is considered complete, so that proper consideration may be given to its contents. The cut-off procedures were attached as an appendix to the Notice in this proceeding, and the date specified therein established the date after which no other comments would be accepted. A party who fails to submit available information to the Commission during the appropriate comment or reply period does so to his own detriment. Hardinsburg, KY, 7 FCC Rcd 1746 (Policy and Rules Div., 1992)

In addition, Equus provides no substantive basis for the Commission to vary from its long-standing policy of disallowing late-filed comments. Equus notes that it submitted an application for modification of construction permit before the NPRM was released. As such, Equus' application may be considered a timely-filed counterproposal, whose merits are weighed against those of Bible's proposal. Thus, Equus suffers no detriment from rejection of its late-filed comments.

Bible is not further addressing in general the merits of Equus' counterproposal, as the time for reply comments has long passed. However, Equus raises one matter of substance which should be addressed. Equus asserts that Bible's petition was defective for failure to protect the rule-making reference coordinates for Channel 244B1 at Buena Vista, Virginia. Equus fails to consider Section 73.208 (a)(1) of the Commission's rules, which clearly states that transmitter sites, if authorized, are the first

consideration in determining reference points for petitions to amend Section 73.202(b). FCC reference coordinates are listed as "second" in Section 73.208, in a subparagraph separate from the first consideration. As Equus' station does have an authorized transmitter site, that site was the only site which Bible had to protect in its petition for rule making. Bible's proposed site was fully spaced to the Buena Vista reference point as defined in Section 73.208. Bible did not have to protect any other location.[2]

Accordingly, the Commission must deny Equus' motion and dismiss its late-filed comments.

Respectfully Submitted,

BIBLE RADIO BROADCASTERS

By _____
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April 14, 1999

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[2] Equus' cites to a Mass Media Bureau ruling in support of its position. However, such a ruling, even if on point with Equus' position, is not binding precedent. No Bureau adjudicatory ruling can supplant a Commission rule.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 1999, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

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