

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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JUL 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-196
Table of Allotments)	RM-9619
FM Broadcast Stations)	
(Bethel Springs, Tennessee))	

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

**REPLY IN OPPOSITION TO COMMENTS OF
THUNDERBOLT BROADCASTING COMPANY
AND
MOTION TO DISMISS "COUNTERPROPOSALS"**

Dana R. Withers (Withers), permittee of FM Broadcast Station KBGJ, Channel 247A, Marble Hill, Missouri, by her attorney, hereby files this "Reply" in opposition to the "Comments and Counterproposals" of Thunderbolt Broadcasting Company (Thunderbolt or WCMT), licensee of FM Broadcast Station WCMT-FM, Martin, Tennessee. Withers hereby respectfully moves the Commission not to accept "Option II" of the "Counterproposals" set forth by Thunderbird, but rather to dismiss "Option II" as procedurally defective. In support whereof, the following is shown:

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List A B C D E

1. At 64 Fed. Reg. 29979, the Commission established July 27, 1999 as the date for filing Reply Comments in the above-referenced proceeding. The July 12, 1999 "Comments and Counterproposals", which if Option II were adopted would affect Withers' rights as a holder of an FM Broadcast Station construction permit on Channel 247A at Marble Hill, Missouri, has made Withers an interested party in the outcome of Docket 99-196. As this pleading is being filed on July 27, 1999, it is timely filed.

2. **Thunderbolt Proffers an Unacceptable "Contingent" Counterproposal.** In "Option II", Thunderbird proposes that KBGJ(FM), Marble Hill, Missouri, be reassigned from Channel 247A (97.3 MHz) to Channel 228A (93.5 MHz). In so doing, Thunderbird would force KBGJ(FM) to endure a short-spacing to a second-adjacent channel facility, KGKS(FM), Channel 230C3, Scott City, Missouri, which does not exist at present. Thunderbolt's representatives contacted the undersigned prior to the filing of WCMT-FM's "Comments and Counterproposals" concerning their proposal; the undersigned informed Thunderbolt's representatives that Withers would not consent to **any** change in channel assignment which would result in any short-spacing. Thunderbird does not tell the Commission about this.

3. Thunderbolt indicates in its "Comments and Counterproposals" that it proposes to overcome the proposed short-spacing of "Option II" by having Zimmer Radio of Mid-Missouri, Inc. relocate the transmitter site of KGKS(FM). However, Thunderbolt's submission on this point is contradictory, to say the least. Thunderbolt's consultant, at page 3 of his narrative "Technical Report" exhibit, states that

The licensee of station KGKS has consented to a slight change in transmitter site, if required, to accommodate the assignment of Channel 228A at Marble Hill.

However, Thunderbolt's attorneys are less than definite as to whether an agreement has been reached with Zimmer Radio; at pages 6-7 of the "Comments and Counterproposals" pleading, the attorneys state:

Thunderbolt is seeking consent from Zimmer Radio of Mid-Missouri, Inc., the licensee of KGKS(FM), to implement a change in the transmitter site for KGKS(FM), if required, to accommodate the proposed substitution of Channel 228A (in lieu of Channel 247A) for KBGJ(FM) at Marble Hill, Missouri in support of this counterproposal.

4. "Seeking consent" is not the same thing as having "obtained consent". Thunderbolt does not submit a written agreement from Zimmer stating its agreement to move KGKS(FM); interestingly, Thunderbolt makes no statement of

its willingness to pay Zimmer for the cost of acquiring land and erecting a new tower to accommodate KGKS(FM). As to this issue, the undersigned has this afternoon (July 27, 1999) had a telephone conversation with counsel for Zimmer, and Zimmer's counsel indicates that Zimmer has not consented to moving the transmitter site of KGKS(FM) as Thunderbolt would have it do.

5. Furthermore, Thunderbolt fails to address the issue of whether KGKS(FM) can be moved to a different location. In order to secure an upgrade from Class A to Class C3 status on Channel 230 (93.9 MHz), Zimmer in File No. BPH-981026IA had to make an elaborate Section 73.215 showing, as its transmitter site was short-spaced to two facilities, co-channel KSPQ(FM), West Plains, Missouri (by 4.23 kilometers), and first adjacent-channel WMIX-FM, Mount Vernon, Illinois (by 17.03 kilometers-or 10.58 miles). As KGKS(FM) utilizes a directional antenna with which to protect WMIX-FM's normally protected contour, Thunderbolt fails to consider whether a new directional antenna would have to be utilized, or whether Zimmer would have to reduce power at its new site.¹

¹ Zimmer and the licensee of WMIX-FM were involved in negotiations over the extent of the directional antenna to be utilized by KGKS(FM) to

6. Thus, a potential allocation of Channel 228A at Marble Hill is expressly contingent on Zimmer Radio of Mid-Missouri, Inc. finding, and the Audio Services Division approving, a new site which is fully-spaced to Channel 228A at Marble Hill and yet continues to (a) provide contour protection to KSPQ(FM) and (b) protect WMIX-FM's normally protected contour. Such a contingent counterproposal is not acceptable. **FM Table of Allotments, Milton, West Virginia and Flemingsburg, Kentucky**, 11 FCC Rcd 6374 (1996). Furthermore, it is Commission policy not to allot channels unless compliance with the Commission's technical requirements can be shown at the rule making stage to avoid the allotment of substandard frequencies. **FM Table of Allotments, Ocracoke, North Carolina et al**, 9 FCC Rcd 2011 (1994); see also **FM Table of Allotments, Hartford, Vermont**, 8 FCC Rcd 4920 (1993); **Television Table of Allotments, Wilmington, North Carolina et al**, 6 FCC Rcd 6969, 6971 (1991).

7. **There is a Material Question as to Whether South Fulton, Tennessee is a Separate Community for Licensing**

protect WMIX-FM; the two stations have a written agreement whereby Zimmer has agreed not to increase its signal in the direction of WMIX-FM (or within 45 degrees either side of a radial between the transmitter sites of KGKS(FM) and WMIX-FM).

Purposes. Clearly, Thunderbolt is concerned only with upgrading WCMT-FM; it doesn't care what its city of license is. Apparently, it would be just as happy operating WCMT-FM from South Fulton, Tennessee as it is operating WCMT-FM from Martin, Tennessee, just as long as it can be a Class C3 FM station. Thus, it is apparent that Thunderbolt places its own private interests ahead of the greater public interest, which the Commission is charged to vindicate.

8. In Option II, Thunderbolt proposes to reallocate WCMT-FM, which is currently Martin's only FM channel, to South Fulton. Martin has a 1990 U. S. Census population of 8,600, and is the home of the University of Tennessee-Martin. Martin has only one other commercial radio station, Class D AM station WCMT, 1410 kHz (0.7 kW-D, 0.058 kW-N)². By contrast, South Fulton has a 1990 U. S. Census population of 2,688, and is the "twin city" of Fulton, Kentucky, 1990 U. S. Census population 3,078. Fulton and South Fulton share the same U. S. Post Office, as well as the same Chamber of Commerce³, and, apparently, are economically interdependent. Most importantly for purposes of this

²*Broadcasting/Cable Yearbook 1999*, p. D-413.

³Known as "Chamber of Commerce of the Twin Cities", accessed at <http://www.cofctwin.org>.

proceeding, Fulton is the community of license for two commercial radio stations, Class D AM station WKZT, 1270 kHz (1.0 kW-D, 0.054 kW-N), and Class A FM station WWKF, 99.3 MHz (3 kW at 337 feet)⁴.

9. Thunderbolt's Option II raises a question under Section 307(b) of the Communications Act of 1934, as amended, as to whether a fair, efficient and equitable distribution of broadcast facilities would be achieved where the only FM station licensed to a substantial community (home to a state university) would be reallocated to a community (Fulton/South Fulton) which is already served by a Class A FM station.

10. Despite their relative small size, Fulton and South Fulton should be treated as one community for licensing purposes. *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *FM Table of Allotments, Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

11. As such, it would not serve Section 307(b) to deprive Martin of its only FM assignment in order to give a second FM assignment to Fulton/South Fulton, since Martin is

⁴*Broadcasting/Cable Yearbook 1999*, p. D-178.

much larger than the combined population of Fulton/South Fulton.

12. **Conclusion.** Thunderbolt's Option II violates the Commission's policies concerning counterproposals, because (1) the proposed allocation of Channel 228A at the transmitter site of KBGJ(FM), Marble Hill, Missouri is short-spaced to existing KGKS(FM), Channel 230C3, Scott City, Missouri, (2) it is contingent on KGKS(FM), Scott City, Missouri changing transmitter sites, when there is no such application pending and the licensee of KGKS(FM) has not agreed to make such a move, (3) there is no representation that Thunderbolt would reimburse KGKS(FM) for the cost of such a move, and (4) there is no assurance that KGKS(FM) can find a site which is fully spaced to KBGJ(FM), Marble Hill, Missouri and provides contour protection to both KSPQ(FM), West Plains, Missouri and WMIX-FM, Mount Vernon, Illinois, to both of which KGKS(FM) is short-spaced. Furthermore, there is a substantial and material question as to whether South Fulton, Tennessee is an independent community for purposes of 47 U.S.C. §307(b), or rather it should be combined with its adjacent "twin city", Fulton, Kentucky, to which two broadcast stations are licensed, for allocation and licensing purposes.

13. In any event, Option II put forth by Thunderbolt Broadcasting Company fails to meet the policies set forth by the Commission for an acceptable counterproposal, and as a result Dana R. Withers respectfully moves that the Commission **DISMISS** Option II and not accept it as a proper counterproposal.

Respectfully submitted,

DANA R. WITHERS

By



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July 27, 1999

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Reply, etc." were served by first-class United States mail, postage prepaid, on this 27th day of July, 1999, upon the following:

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A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

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