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Federal Communications Commission
Washington, D.C. 20554

Office of the Secretary
TWT:204

December 15, 1999

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DISSEMINATED
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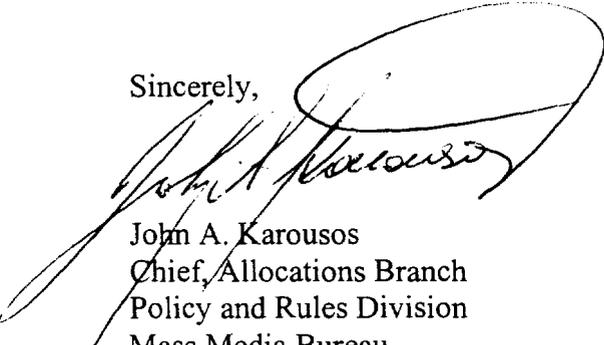
Dear Mr. Garziglia:

This is in response to the petition for rule making you filed on behalf of Thunderbolt Broadcasting Company, requesting the substitution of Channel 236C3 for Channel 236A at Dresden, Tennessee. To accommodate the upgrade, you also request the downgrade of Station WGGC(FM) at Glasgow, Kentucky, from Channel 236C to Channel 236C1.¹ Heritage Communications, Inc., licensee of Station WGGC(FM), filed an opposition. Petitioner filed a reply to the opposition.

We have reviewed your proposal and find that it is unacceptable for consideration at this time. Because it is not Commission policy to entertain involuntary downgrades of other stations, your proposal is not in compliance with the Commission's minimum distance separation requirements because it is short-spaced to the licensed site of Station WGGC(FM), Channel 236C, Glasgow, Kentucky. See Flora and Kings, Mississippi and Newellton, Louisiana, 7 FCC Rcd 5477 (1992). The Commission's Rules require that co-channel Class C3 to Class C allotments be a minimum of 237 kilometers (147.3 miles) apart. At the site you request (36-14-00 NL and 88-35-00 WL), the allotments would only be 227.1 kilometers (141.1 miles) apart. Accordingly, your proposal is not consistent with Section 73.207(b)(1) of the Commission's Rules.

Therefore, for the reasons stated above, we are returning your petition for rule making. You may refile your petition provided you propose a site that meets all of the Commission's technical requirements.

Sincerely,



John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosures

¹We note that on May 17, 1999, the Audio Services Division, Mass Media Bureau, denied the Petition for Reconsideration filed by Thunderbolt Broadcasting Company ("TBC") directed to a previously denied request for waivers of 47 C.F.R. Sections 73.203 and 73.3573, and dismissal of TBC's one-step application requesting the upgrade of Station WCDC(FM) from a Class A to a Class C3 facility.

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July 9, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Reply to Opposition to
Petition for Rule Making seeking
Amendment of Section 73.202(b)
FM Table of Allotments
(Dresden, Tennessee and Glasgow, Kentucky)**

Dear Ms. Salas:

Transmitted herewith on behalf of Thunderbolt Broadcasting Company, the licensee of WCDZ(FM), Dresden, Tennessee, is an original and four copies of its reply to the June 19, 1998 Opposition to Petition for Rule Making filed by Heritage Communications, Inc. in the above-captioned proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



John R. Garziglia
Patricia M. Chuh

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL - 8 1998

In the Matter of)
)
Amendment of Section 73.202(b)) RM No. _____
Table of Allotments)
FM Broadcast Stations)
(Dresden, Tennessee and)
Glasgow, Kentucky))

To: Chief, Allocations Branch

REPLY TO OPPOSITION TO PETITION FOR RULE MAKING

Thunderbolt Broadcasting Company ("Thunderbolt"), the licensee of WCDZ(FM), Dresden, Tennessee ("WCDZ(FM)"), by its attorneys, hereby replies to the June 19, 1998 Opposition to Petition for Rule Making ("Opposition") filed by Heritage Communications, Inc. ("Heritage").^{1/} Because Heritage wantonly makes self-serving mis-characterizations in its Opposition and because the veracity of Heritage's statements and certifications before the Commission are now in question, the Commission should disregard Heritage's Opposition and institute a rule making proceeding toward: (1) the substitution of Channel 236C3 for Channel 236A at Dresden, Tennessee and the modification of the license of WCDZ(FM), Dresden, Tennessee to

^{1/} Heritage is the licensee of WGGC(FM), Glasgow, Kentucky ("WGGC(FM)").

specify operation on Channel 236C3;^{2/} and (2) the substitution of Channel 236C1 for Channel 236C at Glasgow, Kentucky and the modification of the license of WGGC(FM), Glasgow, Kentucky to properly reflect its operation on Channel 236C1.^{3/} In support whereof, the following is respectfully submitted:

Heritage violated its duties of candor before the Commission by wantonly making self-serving statements and certification in its pleadings and applications. In its Opposition, Heritage states, citing a footnote in Thunderbolt Broadcasting Company, 13 FCC Rcd 6959, note 4 (1998), that Thunderbolt's request for the downgrade of WGGC(FM) to reflect its actual class of operation as a Class C1 station (on Channel 236C1) "has already been rejected by the full Commission. . .". Heritage Opposition, at page 2. This is a complete mis-characterization.

The Commission did not reject the idea of involuntarily downgrading WGGC(FM). The Commission merely noted that "the

^{2/} A one-step application filed by Thunderbolt seeking an upgrade of WCDZ(FM)'s facilities to Channel 236C3 with a waiver of the Commission's rules (FCC File No. BPH-951120IE) is on file at the Commission. Although that application was denied, a petition for reconsideration was filed on May 1, 1998, the same date that Thunderbolt's Petition for Rule Making, the subject of Heritage's Opposition, was filed. Thunderbolt will withdraw its Petition for Rule Making if the WCDZ(FM) one-step upgrade application is granted.

^{3/} On September 16, 1997, Thunderbolt Broadcasting Company filed pursuant to Section 1.41 of the Commission's rules a request for Commission action to downgrade the facilities of WGGC(FM), Glasgow, Kentucky to reflect its actual height. As of today's date, no Commission action has been taken on that request.

[Thunderbolt] filing is properly treated as a complaint regarding the allegedly unauthorized WGGC operation and as such, will be forwarded to the Mass media Bureau's Enforcement Division for further investigation." Contrary to Heritage's spin, the Commission's footnote clearly indicates that the operation of WGGC(FM) at below minimum Class C facilities would indeed be unauthorized, warranting further investigation.

Unfortunately, this is not the first time that Heritage behaved irresponsibly. As Thunderbolt explained in its June 2, 1998 Informal Objection and June 26, 1998 Reply to Opposition to Informal Objection,^{4/} Heritage falsely certified to the truth of its response in Section V-B, Question 15(a) of its Minor Change Application by willfully representing that the proposed facilities in its Minor Change Application complied with the spacing requirements of Section 73.207 of the Commission rules without any assessment as to the validity of its representation.^{5/} Additionally, in its June 17, 1998 Supplement to its October 16, 1997 Response to Thunderbolt's September 16, 1997 Request to Downgrade the Facilities of WGGC(FM), Heritage stated that "[Heritage's] decision to increase the tower for WGGC was made for reasons independent of

^{4/} On June 2, 1998, Thunderbolt filed an Informal Objection against an application filed by Heritage seeking to increase the WGGC(FM) tower, among other things (FCC File No. BPH-980513ID) ("Minor Change Application").

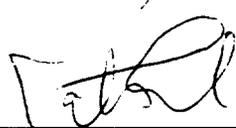
^{5/} It was only **after** Thunderbolt pointed out the false representation, that Heritage examined whether its proposed facility was in compliance with the Commission's spacing rules and filed an amendment to correct its error.

[Thunderbolt's] request to downgrade WGGC." See Heritage's June 17, 1998 Supplement to its October 16, 1997 Response to Thunderbolt's September 16, 1997 Request to Downgrade the Facilities of WGGC(FM), at page 2. Heritage repeats this claim in its Opposition. See Heritage's Opposition, at note 2. These statement, however, directly conflict with Heritage's previous statement and justification, in its June 17, 1998 Opposition to Informal Objection, that it did not focus on the short-spacing issue because of Heritage's belief that the impact of WGGC(FM)'s proposed height increase would be so minuscule as to nullify any need to examine spacing issues. If the impact of Heritage's proposed height increase is so minuscule, why is Heritage seeking a height increase if not to avoid the downgrade of WGGC(FM), as Heritage claims? Such conflicting self-serving statements is further evidence that the Commission cannot accept the veracity of any of Heritage's statements in its Opposition.

WHEREFORE, for the reasons above, the Commission should disregard Heritage's Opposition and institute a rule making proceeding toward: (1) the substitution of Channel 236C3 for Channel 236A at Dresden, Tennessee and the modification of the license of WCDZ(FM), Dresden, Tennessee to specify operation on Channel 236C3; and (2) the substitution of Channel 236C1 for Channel 236 at Glasgow, Kentucky and the modification of the license of WGGC(FM) to properly reflect its operation on Channel 236C1.

Respectfully submitted,

THUNDERBOLT BROADCASTING COMPANY

By: 

John F. Garziglia
Patricia M. Chuh
Its Attorneys

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July 9, 1998

CERTIFICATE OF SERVICE

I, Lisa Skoritoski, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that a true copy of the foregoing "Reply to Opposition to Petition for Rule Making" was sent this 9th day of July, 1998 by U.S. first class mail, postage prepaid, to the following:

Mark N. Lipp, Esquire
Shook, Hardy & Bacon, LLP
801 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004
(Counsel to Heritage Communications, Inc.)



Lisa Skoritoski