

Before the
Federal Communications Commission
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Amendment of Section 202(b),
Table of Allotments,
FM Broadcast Stations
(West Rutland, VT)

)
)
)
)
)

MM Docket No. 00-12
RM-9706

To: Chief, Allocations Branch

REPLY COMMENTS

The Great Casco Bay Wireless Talking Machine Limited Liability Company ("Great Casco"), by its attorney, hereby submits its Reply Comments in response to the "Opposition to Proposed Rulemaking and Order to Show Cause" ("Opposition") filed on March 23, 2000 by Brian Dodge and WRUT, Inc.¹ With respect thereto, the following is stated:

As indicated previously, although by *Report and Order* adopted on October 12, 1990, 5 FCC Rcd 5886 (Policy and Rules 1990), Channel 292A at West Rutland, Vermont was upgraded from Channel 298A to Channel 298C3, no implementation the upgrade of the channel ever has occurred. First, the upgrade in the *Report and Order* was subject to the following condition:

¹ Pursuant to Section 1.420 of the Commission's Rules and paragraph 9 of the *NPRM*, all parties filing comments were required to serve undersigned counsel, who serves as the Petitioner's counsel. While on March 22, 2000, Brian Dodge contacted undersigned counsel and indicated that an extension of time to respond was going to be filed, undersigned counsel at no time has been (1) served with a copy of any request for an extension of time; and (2) served with the Opposition that apparently was filed with the FCC. As such, it was an *ex parte* communication in violation of Section 1.1206(a) of the Rules, is contrary to Section 1.420(a) of the Commission's rules, and must be stricken. *Prescott Valley, AZ*, 6 FCC Rcd 2037 n.2 (Allocations Branch 1991). Nevertheless, this Reply is being filed in response to the Comments.

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Within 90 days of the effective date of this Order, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(*Id.* at ¶ 4). That condition was not complied with. Although the *Report and Order* became effective on November 26, 1990, an application specifying operation on Channel 298C3 at West Rutland, Vermont was not filed until August 3, 1991. Moreover, once filed, the application was not dutifully prosecuted. The application ultimately was dismissed for failure to prosecute, on December 11, 1991, and the dismissal of that application became final on January 10, 1992. Finally, no subsequent attempt to comply with the Commission's rules ever occurred, insofar as no new Class C3 application, to replace the one that was dismissed by the Commission in 1991, ever was filed by the permittee.²

WRUT and Dodge claim that C3 proposal is not abandoned, and suggests that WRUT has not been implemented due to Dodge's many "auto accidents" and his lack of understanding of the new rules. Opposition at 2. They also state that the channel should not be downgraded because coverage of the area is difficult because of the mountainous terrain. Opposition at 2-3. Although WRUT and Dodge requested ten days within which to submit "maps and other amendment," substantiating these claims, no such maps or amendments have been served on counsel, or apparently filed with the FCC.³

The WRUT/Dodge claims are totally unsubstantiated. No evidence is provided of the

² The permittee's underlying Class A permit also was canceled on April 13, 1993. That cancellation is currently on appeal. The permittee subsequently attempted to downgrade its facility, and to commence operations as a Class A facility. Program Test Authority to operate that Class A facility was denied. *NPRM* at ¶ 3.

³ There is no record of any such filing in the FCC's Electronic Comment Filing System.

"auto accidents" or the impact it would have had on WRUT's hiring an engineer at some point during the past eight years and filing a Class C3 application during that time.⁴ Moreover, the inference that the accidents have incapacitated him in the manner described such that he is unable to respond to Commission inquiries, and his admission that he is unable *even understand FCC rules* (Opposition at 2) calls into question whether he remain competent or qualified to remain an FCC licensee. In any event, due to the lack of facts or documentation to back up their assertions that has been filed with the Commission, no "substantial or material question of fact" has been raised which rebuts the facts already presented to the FCC. The fact of the matter is that valuable spectrum has remain fallow and unused due to WRUT's failure to use Channel 298C3. Other uses exist for the frequency, such as the one suggested in the *NPRM*, namely permitting WTHT to increase power to a full 100 kW. WRUT has had over eight years to utilize its rulemaking grant and at least *attempt* to upgrade its service. Its failure to do so rightfully should result in WRUT's forfeiture of its rights to the unused and unapplied for Class C3 frequency class.

In short, Great Casco continues to support the grant of this rulemaking request. WRUT's Comments must be stricken due to Brian Dodge's failure to comply with Commission rules concerning service of the document which, in this case, has resulted in the necessity for filing a reply beyond the normal pleading cycle. Moreover, the utter lack of factual or equitable justifications to explain his many years of lack of action should serve as not excuse for the continued reservation of a valuable Class C3 frequency for use by WRUT, when other uses for

⁴ It should be noted that excuse is similar to the one raised by Dodge in earlier requests to the FCC. *See* Attachment 1. In his earlier appeal to the FCC on May 12, 1993, he reported he had been in *two* auto accidents which had debilitated him. According to his latest comments, he had been "in no less than ten auto accidents with multiple injury's [sic]."

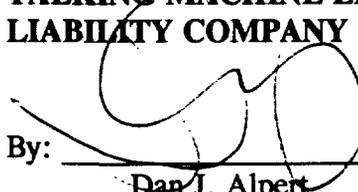
the frequency readily exist.

WHEREFORE, it is respectfully requested that these Reply Comments be accepted.

Respectfully submitted,

**GREAT CASCO BAY WIRELESS
TALKING MACHINE LIMITED
LIABILITY COMPANY**

By: _____


Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
(703) 243-8690*

April 12, 1999

ATTACHMENT 1

Before the Federal
Communications Commission
Washington DC. 20554

Petition for Re Consideration

In re WBRU (FM), West Rutland Vt
BPH 891229JP
BMPH-891229ID

In Reply Refer to 1800B3-MFW

Larry Eads; Chief
Audio Services Division
Mass Media Bureau.

RECEIVED

MAY 12 1993

FCC MAIL BRANCH

Dear Mr Eads:

Now Comes Brian Dodge Pro Se
to Request the Commission to
reinstate the above mentioned
Construction Permit and Grant
the modified Construction Permit
with the Requested extension for
construction.

Brian Dodge has within this
time period of August 13, 1991
to the present has been in
three accidents with hospital
stays and long times out of work
and unable to perform my normal
Duties.

2

ON Aug 18th 1991 while traveling
Back to New Hampshire my pickup
truck was hit by a tractor trailer
rig on I-80 in Deer Township
Pa. My Truck Rolled at least
ten times and came to rest
with the equipment I was carrying
spread over 1000 ft over the
road and the truck never stopped

I was hurt very badly with
broken bones, bleeding from
many places of my body and
head injury's. I was transport
to the local hospital and after
I was able I was transferred and
admitted to Frisbee Hospital in
Rochester N.H. I was operated on
again then was ordered to bed
rest for over 3 months. It was
some time in February before I could
return to work. But I was
still being seen for my head
injury's and a broken leg.

Soon after that I was in a
another auto accident in Northwood
N.H. A mother was caring for
her baby and took her eyes
off the road in which she
traveled in to my lane and
hit me nearly head on.
The car I was driving was
totaled and thank God the

3

Mother and her Baby were OK But I received Head Injuries In which I was transported By Ambulance yet again to Frisbee Hospital in Rochester NH, and treated for Head Injuries again. I was out of work Due to Brain Damage for several Months Rest and more tests were the only thing that could Be Done.

All this time the letter Dated August 13, 1991 was unopened and unanswerd.

The first part of January 1993 I was able to open the package. I then called Dale Bickel an FM Engineer at the FM Branch He advised to Resubmit the application stating the reason for Delay and It could Be processed quickly. That was January 29th 1993

Please note your Letter Dated April 13 1993 was Not Received At the Dover PO Box until May 05th 1993 We Herelby Request that this petition By accepted as timely as it gave us less than a week to Response timely and the job we have to do is hard with a Problem of forgetfulness, and still Partly Disabled by injuries,

4

Since Early 1990 WRUT has had the equipment on hand to build WRUT on PICO Peak in Mendon.

I hired Peter Morton who has built many stations and runs Technical Services of Rupert Vermont to Retune the Transmitter listed in his statement to 107.5 MHz for WRUT.

To Build this station would not be too hard if the weather was right.

In the summer time would be great.

ONE has to install the Antenna we have to the pre existing tower next install the coax we have to the tower and run it to the Building next Hook up the already tuned transmitter then wire up the studio equipment to the proposed studio and the station could start serving the town of West Rutland.

Since the tower is already erected and the equipment is on hand and tuned up for our channel.

Substantial progress has been made to construct the station.

All that has been done is all that can be done since the Commission has not granted our New Construction Permit. to change sites.

⑤

This Applicant has taken all possible steps it can to complete construction and because of Health Reasons (Reasons clearly beyond the permittees control) the problem was not expeditiously solved.

It is in the Best interest to the public to Reinststate this Construction Permit.

① Permittee has Reached an agreement with a buyer to purchase the Construction Permit. This Purchase and sales agreement will be filed with the Commission to Amend this Request and the Request of Mr Kelly within 20 Days.

② The granting of the sale, the quick Building of the station, and of course the Reinstatement of the Construction Permit would Bring West Rutland it First Aural Service within months not years. If the Commission does not Grant Reinstatement of the C.P. then they will have to open a window and Perog Bull file and then several years later someone will Get a Construction Permit to Build. By then the space that is being reserved on the Telephone tower will Be gone and

6

The Station may not Be Buildable.
The window to Build is mostly State + National Forest
Who wants another tower in the
middle the Both the State +
Green Mountain National Forest,
NO ONE. AND the Government will Not Let it happen.

In accordance with the current
Guidelines of the Commission
an extension can Be Granted
if one only of the following
Criteria has been Met:

① Construction is complete and
Program testing is underway
Looking toward filing of a license.

When Miss Austin would Not
let us Build on her Land although
we had a signed lease, that was
impossible to win if we fought with
WCAX TV. over the site.

② Substantial progress has been made
etc.

Per statement of Peter Norton the
equipment need to Build the Station
is on Hand and Ready to Build
with the pre-existing tower on
Pico Peak (See extension Application)

③ No Progress has been made for
Reasons clearly beyond the control of
the permittee.

7

I have Been in Three Auto accidents since August 13th 1991 All have hospitalized me and Two have caused me Head injuries in which will not let my Brain operate properly I can not think clearly or make a decision well. I have Bad Headaches and could Not work. a lot of the time.

As stated in a note of Dr. Terry Bennett of Rochester one of several Doctors I'm still being treated By I have Been in multiple auto accidents.

This is the reason I did not amend the pending applications in a timely matter.

Since I'm getting out of the Radio Station Ownership Business (See Letter of April 18th 1993)

Please Let someone else Bring West Rutland their First local Service and Not Let them wait for several more years.

Also the Application was not dismissed twice for failure to prosecute being in my control the first time. The Commission sent the letter to an address we never heard of. the second time Because of Health Reasons it was NOT Answered in a timely

⑧ Matter.

Please Reinstate BPH 891229TP
Please Reinstate BPH 891229MT
Please Reinstate BPH 891229ID
Please Grant BPH-930223IC

And Note that the short form transfer
from Brian Dodge to WKUT Inc
Has Been consummated.

Please forgive the un typed petition
The Lady that would normal type
this has come down with cancer
and is in treatment today.

Please find enclosed Exhibit
A (Doctor statement from Dr Terry
Bennett MD) and Exhibit B
(Statement of Peter Morton of
Technical Services.)

Yours truly

5-11-93

Brian Dodge
President of
WKUT, Inc.

to whom it may concern:

I, Peter Morton, owner of Technical Services, Rupert VT, having examined the following equipment for WRUT Inc., do hereby verify that said equipment is exists and is in their possession at this time.

1. Ken BIF-1E2 FM Transmitter serial # BC37826

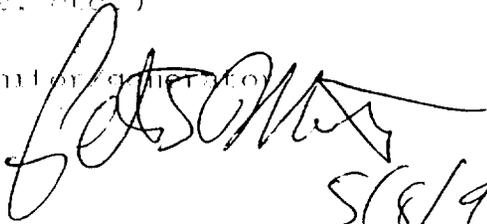
2. Clifton badge CPLP single bay FM antenna with radome

3. approx. 100 feet of 1 5/8" cablewave coaxial cable and fittings

4. Arvokid systems model 3000SC audio console serial # 1047

5. various audio source equipment (cart machines, microphones, turntables, CD players, cassette machines, etc.)

6. Deman Fin IRS-Z/TG-Z ERS monitor/generator


5/8/93

1(802)394-7858

Terry M. Bennett, MD, MPH
28 Rochester Hill Road
Rochester, New Hampshire 03867
(603) 332-0379
(603) 332-5211, ext. _____

DEA 2124220

NH LIC. 6439

MASS. LIC. 32052

Patient's Name Dodge, Brian

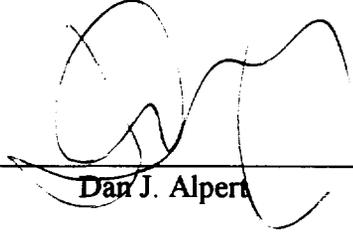
Address STny 1993

R Lowman (T) May Concern:
Mr. Dodge has been in 2 motor-vehicle accidents
the first in August 1991 in Pennsylvania, resulting
in a head injury. 2nd accident early in 1992,
again a head injury. He has had trouble meeting
administrative deadlines on the basis of these injuries
out of work etc. Please excuse any delays and
reschedule. Regards TMB Bennett

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing document was served on April 12, 2000 on the following parties by First Class Mail:

Brian Dodge
WRUT, Inc.
P.O. Box 2401
W. Brattleboro, VT 05301



Dan J. Alpert