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JAN - 8 2001 ROBERT H. FRASER, Of Counsel

FCC MAIL ROOM

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January 6, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals/445 Twelfth Street, S.W.
Washington, D.C. 20554

VIA FEDERAL EXPRESS OVERNIGHT

RE: Reply to Order to Show Cause in MM Docket No. 00-87; RM 9870; RM 9961

Dear Ms. Salas:

There is transmitted herewith on behalf of Combined Communications, Inc., the licensee of Station KTWS(FM), Bend, Oregon, an original plus three copies of its Reply to Order to Show Cause in the above-entitled rule making.

An extra copy of this transmittal letter is enclosed, as well as a pre-addressed, stamped envelope. Please confirm your receipt of the filing of this Reply to Order to Show Cause by date stamping the extra copy of this transmittal letter and returning it to the undersigned counsel.

Should additional information be desired concerning this Reply, please contact undersigned counsel.

Respectfully submitted,

COMBINED COMMUNICATIONS, INC.

J. Dominic Monahan
J. Dominic Monahan, Its Counsel

JDM/nlk
Enclosures

- cc: Ms. Leslie K. Shapiro, FCC (w/enclosure)
- Lee J. Peltzman, Esquire (w/enclosure)
- Dawn M. Sciarrino, Esquire (w/enclosure)
- Clifford M. Harrington, Esquire (w/enclosure)
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC MAIL ROOM

In the Matter of)
)
Amendment to §73.202(b)) **MM Docket No. 00-87**
Table of Allotments) **RM-9870**
FM Broadcast Stations) **RM-9961**
(Brightwood, Madras, Bend and)
Prineville, Oregon)

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

REPLY TO ORDER TO SHOW CAUSE

Combined Communications, Inc. ("Combined"), the licensee of Station KTWS(FM), Bend, Oregon, through its counsel, respectfully submits its Comments in opposition to the *Order to Show Cause* released November 17, 2000 in MM Docket No. 00-87. In support, the following is shown.

BACKGROUND

The *Order to Show Cause* grew out of a rule making proceeding initiated by Muddy Broadcasting Company ("Muddy") proposing to allot Channel 251C-3 to Brightwood, Oregon as a first local service. In response to the *Notice of Proposed Rule Making*, 15 FCC Rcd 8964 (2000), issued in that proceeding, an entity known as Madras

Broadcasting (“Madras Broadcasting”) filed a counterproposal requesting the allotment of Channel 251C-1 to Madras. No provision was made for an alternative channel in Brightwood.

The Madras Broadcasting proposal to utilize Channel 251C-1 in Madras not only failed to provide any channel for use in Brightwood, Oregon, but would require Station KTWS(FM) to shift its operation from Channel 253C-3 for Channel 252C-3 in Bend, Oregon. Moreover, it would require a substitution of Channel 255C-3 for Channel 254C-3 in Prineville, Oregon.

In response to the Madras Broadcasting filing, Combined filed *Comments* opposing the counterproposal. However, rather than reject the counterproposal outright, Combined demonstrated that there were at least five other channels available for assignment to Madras which, if allocated, would allow the allocation of Channel 251C-3 to Brightwood to go forward. At the same time it would relieve Combined of the burden of disrupting the operation of Station KTWS with a channel shift.

Muddy also filed *Comments* in opposition to the Madras Broadcasting counterproposal, pointing out that while Channel 251C-3 was the only available channel for Brightwood, numerous alternative channels were available to Madras, including Channels 291C-1, 291C-2, 227C-3, 299C-3, 293A, and 227A. In its *Reply Comments*, Madras Broadcasting rejected the idea of using Channel 291C-1 on grounds it was not an equivalent channel because it would have required the construction of a 2,800 foot tower to provide line-of-sight coverage to Madras. Madras Broadcasting argued that a

tall tower was simply not feasible and thus could not be considered a valid alternative to Channel 251C-1. When Muddy pointed out in its *Motion to Strike the Reply Comments of Madras Broadcasting* that Madras Broadcasting had considerably underestimated the size of the tower required for line-of-sight coverage in its counterproposal, Madras Broadcasting responded with an *Opposition to the Motion to Strike* and used the occasion to proffer an amendment to its original site proposal. The amendment was a tacit concession that indeed Madras Broadcasting's original site did in fact have significant line-of-sight problems, thus requiring a new reference point.

THE ORDER TO SHOW CAUSE

The Commission has issued its *Order to Show Cause* without any demonstrated examination, analysis or resolution of the issues previously raised and the pleadings filed in this proceeding. Rather, the Commission has concluded that "both proposals in this proceeding could provide significant public interest benefits." Presumably, on the possibility that the Commission might adopt the Madras Broadcasting counterproposal, it has directed Combined to show cause why its license should not be modified consistent with the Madras Broadcasting proposal. In the *Order to Show Cause*, the Commission points out this could be done if Madras Broadcasting operated from a restrictive site some 36.4 kilometers northeast of Madras.¹ This would avoid short spacing to Station KKTT in Eugene, Oregon and would require the substitution of Channel 253C-3 in Bend

¹The site location on which the Commission predicates the possible allocation of Channel 251C-1 to Madras is the site originally proposed by Madras Broadcasting in its counterproposal.

for the present operation of Station KTWS on Channel 252C-3. In addition, Channel 255C-3 would have to be substituted in Prineville for Channel 254C-3.

The Commission's characterization of this proceeding as one involving two proposals, each with "significant public interest benefits" suggests that the issue in the case has been distilled down to a choice between allocating Channel 251C-3 to Brightwood or Channel 251C-1 to Madras. This seemingly ignores the technical deficiencies and terrain blockage problems acknowledged by Madras Broadcasting's own admission. Moreover, it suggests that the Commission has not considered the fact that there are in fact several other options available to the Commission which will enable both communities to receive an FM allocation without forcing Station KTWS to involuntarily shift frequencies. Combined urges the Commission to consider and adopt this approach and submits the following:

ARGUMENT

Section 307(b) of the Communications Act of 1934, as amended, mandates that the "Commission shall make such distribution of licenses, frequencies, hours of operation and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." 47 USC §307(b). Given that new and first local transmission service to two communities is at issue in this case, the "fair, efficient and equitable distribution" standard is of utmost concern. This proceeding need not be decided on "an either-or basis" to the ultimate

prejudice of one or the other parties. Instead, the public interest concerns of both Brightwood and Madras can be served by the judicious exercise of administrative discretion -- discretion which requires the "fair, equitable and efficient" distribution of spectrum to insure that more, not less, service be provided to the public. In short, the needs and interests of both communities must be weighed, balanced, and considered, particularly where the Commission has an opportunity to provide first local transmission service to two communities instead of one.

Here, the FCC has been presented with a proposed resolution which will allow it to satisfy the needs of both the Madras and Brightwood communities. At the same time, assignment of channels to both communities will avoid the disruptive and unnecessary substitution of channels for Station KTWS. Forced channel substitution for existing stations causes listener confusion, loss of listenership, and loss of revenues. One need go no further than review the recent experience of KTWS's sister facility, Station KLRR(FM) in *Redmond*, Oregon, which was only recently forced to undergo a channel change (*see* MM Docket No. 96-7). As noted in its *Comments* filed earlier in this proceeding, Station KLRR(FM) has yet to recover its revenues or competitive position lost through that channel switch.

In this instance, the facts clearly support a proposal which accommodates the public interest needs of both Brightwood and Madras. As set forth in Combined's earlier *Comments* as well as those of Muddy, the Commission's goals of a "fair, efficient and equitable distribution" of services can be realized by adopting Muddy's rule making to

allocate Channel 251C-3 to Brightwood while allocating one of at least seven known FM channels potentially available to Madras. These include Channel 227C-1, 291C-1, 291C-2, 227C-3, 299C-3, 293A and 227A. All of these channels can be allocated to Madras in locations much closer to Madras than the proposed site restriction offered by Madras Broadcasting.

While Combined recognizes that Madras Broadcasting has objected to the use of any channel other than 251C-1, those arguments must be rejected. Consider first Madras Broadcasting's unwillingness to accept the allocation of any channel other than Channel 251C-1. Madras Broadcasting opposed the use of Channel 291C-1, claiming terrain blockage between the site proposed by Muddy and the community of Madras would require a tower of over 2,800 feet in height. Yet the site proposed by Madras Broadcasting in its counterproposal, and the site upon which the Commission has predicated its *Show Cause Order*, suffers the same infirmities.

As demonstrated in the *Reply Comments* of Muddy, the Madras Broadcasting site would require a massive 2,625 foot tower to establish line-of-sight to Madras. Such a proposal is an unrealistic requirement to obviate a major terrain obstruction. *Jefferson City, Tennessee, et al.*, 13 FCC Rcd 2303 (1998). In *Jefferson City*, the Commission found that requiring even a 1,261 foot tower was "unrealistic" to overcome a major terrain obstruction. It is self-evident that a counterproposal requiring a tower twice that height to overcome a line-of-sight problem must be rejected. Thus, if the line-of-sight arguments raised by Madras Broadcasting against the use of Channel 291C-1 are deemed

persuasive by the Commission, then the same argument must hold true for the Madras Broadcasting site for Channel 251C-1.² In short, the proposed use of Channel 251C-1 as an allocation to Madras, Oregon would simply not be feasible.

ADDITIONAL C-1 CHANNEL MAY BE AVAILABLE

Combined has determined that even a second C-1 channel may be available for allocation to Madras. Attached is an engineering study demonstrating that Channel 227C-1 can be allocated to Madras, requiring only the substitution of Channel 230A at Condon, Oregon for open Channel 228A. No channel changes would be required to any on-air station. Use of Channel 227C-1 meets all minimum spacing requirements for an allotment site to serve Madras, except the Condon allotment on Channel 228A. However, if Channel 230A is substituted for Channel 228A, Channel 227C-1 can be allocated to Madras (*see attached Engineering Statement*).

² Madras Broadcasting clearly recognized that its originally referenced site for the use of Channel 251C-1 in Madras is subject to the same criticisms it has leveled against the site proposed by Muddy for Channel 291C-1 in Madras. It was for this reason that Madras Broadcasting used an *Opposition to Motion to Strike* in an effort to shore up what it now acknowledges as a flawed proposal from the outset. However, Madras Broadcasting is barred from correcting an inherently defective counterproposal by such a late-filed and unauthorized pleading. Counterproposals are required to be "technically correct and substantially complete" at the time they are filed. *See e.g. Fort Bragg, California*, 6 FCC Rcd 5817 (1991), and *Provincetown, et al., Massachusetts*, 8 FCC Rcd 19 (1992). And even if the amended site of Madras Broadcasting had been timely proposed it still suffers from the requirement to use a tower of at least a 1,000 feet or more to overcome a major terrain obstruction. Moreover, the proposed thousand-foot tower structure would have to be located atop an isolated and spiring promontory in desolate country which is not accessible by roads. Similarly, the site is not served by an electrical service (*see site map submitted by Madras Broadcasting, or Figure 4 to its Opposition to Motion to Strike, filed November 2, 2000 -- some four months after it filed its counterproposal*). Accordingly that *Opposition to Motion to Strike* should be rejected *in toto*.

***THE ALLOCATION OF MULTIPLE CHANNELS IS CLEARLY SUPERIOR
TO THE SINGULAR ALLOTMENT OF CHANNEL 291C-1 TO MADRAS***

Any determination of this proceeding must be weighed in favor of providing the greatest increase in overall service to the public. Thus, in making this determination, the Commission must take into account the populations which would be served by the introduction of new service. Attached is a population study of the persons would be covered with 60 dbu coverage should the various allotments proposed be granted. Set forth below is a comparison of the populations which would be served by the various allotment proposals:

	Channel	60 dbu
Madras Broadcasting	251C-1	53,225
Muddy Broadcasting	291C-1	61,030
Muddy Broadcasting	291C-2	38,040
Combined Communications	227C-1	60,085
Brightwood Broadcasting	251C-3	135,372 ³

On a one-to-one basis, the proposals to allocate Channel 291C-1 or Channel 227C-1 to Madras are clearly superior to Madras Broadcasting's proposed use of Channel 251C-1. Even the proposed allocation of Channel 291C-2 provides almost equivalent service to the populations which would be reached by the Channel 251C-1 proposal of Madras Broadcasting, *i.e.* 38,040 versus 41,467.

³See page 6 of *Reply of Muddy Broadcasting to Opposition of Madras Broadcasting*, dated July 25, 2000. Population computations for the Brightwood proposal were based on a facility at full class height and power at the reference coordinates.

But even more compelling than the assessment of population coverage of the individual allocations is the aggregate coverage resulting from allocating channels to both Brightwood and Madras. As shown above, the Muddy proposal will bring new service to over 135,000 people. Combining this with the additional 60 dbu service achieved by using an alternative C-1 channel in Madras, *i.e.* 291C-1 or 227C-1, the total number of persons served by new service reaches almost 200,000 people. Contrasted to Madras Broadcasting proposed singular use of Channel 251C-1, only 53,224 persons would be reached, or only a quarter of the population which would be served by allocations to both communities. Even the use of Channel 291C-2 in Madras would allow a new aggregated population of over 175,000 persons to receive new service. Combined submits that disparity in the populations which will be served by the respective proposals clearly warrants rejection of Madras Broadcasting's proposal for the exclusive use of Channel 251C-1 in Madras.

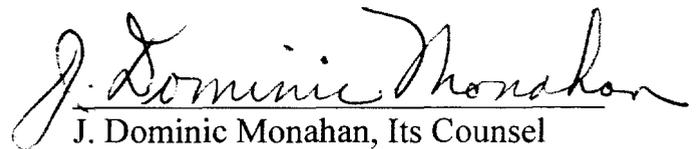
CONCLUSION

Madras Broadcasting has failed to demonstrate that the allocation of Channel 251C-1 to Madras is a technically feasible assignment of an FM frequency. The severe site restrictions and resultant terrain obstructions involved made it highly unrealistic that the channel could ever be activated in accordance with the Commission's rules. The only purpose served by the proposed allocation is to block the assignment of Channel 251C-3 to Brightwood.

But if the Commission determines that Madras should have an FM allocation as a result of this proceeding, the Commission should pursue a proposal which allows both Brightwood and Madras to each receive its first local FM allocation. Such an approach will provide new service to at least four times the population which would be achieved by allocating Channel 251C-1 to Madras on a singular basis. This approach has the added advantage of allowing the fair, efficient and equitable distribution of frequencies while avoiding the disruption of service to Station KTWS. Given these considerations, Combined respectfully submits that Brightwood be allocated Channel 251C-3 and that Madras be allocated any of the channels demonstrated above to be available. Such a resolution will provide each party with its own allocation and is superior to a course of action which would grant one community an allocation at the expense of the other receiving first service. Finally, the allocation of frequencies to both Madras and Brightwood as proposed herein will terminate any further need for this show cause proceeding.

Respectfully submitted,

COMBINED COMMUNICATIONS, INC.


J. Dominic Monahan, Its Counsel

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January 6, 2001

-10- Reply by Combined Communications, Inc. to Order to Show Cause

ENGINEERING EXHIBIT

**IN SUPPORT OF COMMENTS TO FCC ORDER TO SHOW CAUSE
MM DOCKET # 00-87; RM-9870; RM-9961
prepared for Combined Communications, Inc. - owner - KTWS (FM), Bend, OR
January 2, 2001**

This Engineering Exhibit shows that yet another Class C1 channel has been found that can be allocated to Madras, allowing both Madras and Brightwood to be allotted with their first local service, while sparing KTWS (FM) a disruptive and unnecessary frequency change.

A Proposed Rulemaking, proposing the allotment of Channel 251C3 to Brightwood, Oregon, was filed by Muddy Broadcasting Company ("Muddy") on March 16, 2000. A counterproposal was filed subsequently filed by Madras Broadcasting requesting that Channel 251C1 instead be allotted to Madras, Oregon. To accomplish this goal, the allotment at Bend, Oregon, would need to be modified from Channel 252C3 to 253C3, the license of KTWS (FM), Bend, Oregon would need to be modified to reflect this channel change, and the open allotment at Prineville Oregon would need to be modified from Channel 254C3 to 255C3.

Subsequently, both Muddy Broadcasting Company and Combined Communications, Inc., (licensee of KTWS) filed comments in opposition to the Madras Broadcasting counterproposal. In part, they contended that the channel changes proposed by Madras Broadcasting are unnecessary, due to the existence of several alternative channels that can be allotted to Madras, Oregon.¹ None of these alternative channels requires any channel substitutions on the part of other FM stations or open allotments. Muddy also indicated that there were no alternative channels that could be allocated to Brightwood, Oregon. Our studies agree with these findings.

¹Muddy Broadcasting identified at least eight other FM channels that could be allocated to Madras: 291C1, 291C2, 227C3, 299C3, 257C3, 293A, 227A, and 257A.

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The attached Engineering Exhibits show that another Class C1 channel - Channel 227C1 - can be allocated to Madras, requiring only a simple reallocation of the unoccupied and unapplied-for open allotment at Condon, Oregon. No channel changes to an on-air station would be required. Like the alternative channel 291C1 previously identified by Muddy in its July 25, 2000 Reply in Opposition to Counterproposal of Madras Broadcasting, Channel 227C1 at 44:37:50N; 120:37:55W, also meets all the minimum requirements for an allotment site to serve Madras. Exhibit E-1 shows an Allocation Study for the suggested CH 227C1 site. It shows that this site is fully spaced to all facilities, except the Condon allotment on CH 228A. If Condon were moved to CH 230A, it would be fully spaced to CH 227C1 at this location. Exhibit E-2 shows that Condon can be reallocated to CH 230A at its current allotment site, with no spacing problems. Exhibit E-3 shows the proposed 227C1 allotment site, using a section of the 7.5 minute Axehandle Butte USGS map. Exhibit E-4 shows that there would be FCC 70dBu coverage to the city of License. The base map in this case is a section of the USGS State of Oregon, 1:500,000 scale, photo-reduced to 80% of the original size.

This firm also conducted a new population study using the services of Dataworld. The results, contained in Exhibit E-5, show that both the alternative channel 291C1 identified by Muddy, and the 227C1 alternative channel described herein, would provide service to significantly more persons than either of the two sites for Channel 251C1 previously identified by Madras Broadcasting. For example, based on the most recent (1998) population data, Channel 291C1 would serve 47.2% more persons within the 60dbu contour, and 76.3% more persons within the 70dbu contour, than would Channel 251C1 at the amended site identified in Madras Broadcasting's Opposition to Motion to Strike of November 2, 2000.

Conclusion

The record now includes nine alternative channels that can be allocated to Madras - two of which are C1 channels which are at least functionally equivalent if not superior to the CH 251C1 allotment sought by Madras Broadcasting. Some of the other lower class channels identified by Muddy, such as 227C3, 293A, and 227A, would provide superior service to Madras itself, in that they could be allocated much closer to the city and with excellent line-of-sight characteristics. In short, a cornucopia of options is now present by which both Madras and Brightwood can be allotted with their first local service, while sparing KTWS (FM) a disruptive and unnecessary frequency change.

EXHIBIT E-1
MADRAS CH 227C1 - ALLOCATION STUDY

Title: NEW MADRAS 227C1

Study for: Combined Communications, Inc.

Search Channel: 227 Class: C1 Latt: 443750 Long: 1203755

Stn	Location	Ch	Cl	Brg	Dist	Req	Diff	
KMSW	The Dalles, OR	224	C3	336.1	123.99	76.	47.99	OK
SUNR	Sunriver, OR	224	C2	219.4	109.6	79.	30.6	OK
KKNU	Springfield-Eugene, OR	226	C	251.3	209.9	209.	.95	OK
KTWY	Walla Walla, WA	227	C1	51.	244.85	245.	-.25	OK*
KUBE	Seattle, WA	227	C	340.6	343.4	270.	73.4	OK
COND	Condon, OR	228	A	27.3	76.2	133.	-56.8	Short --DELETE--
KPXA	Sisters	281	C2	222.3	82.9	40.	42.9	OK
<hr/>								
ADD	Condon	230	A	27.3	76.2	75.	1.2	OK --ADD--

*OK per §73.208(c)(8) rounding.

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EXHIBIT E-2
CONDON CH 230A - ALLOCATION STUDY

Title: CONDON REPLACEMENT CHANNEL 230A
 Study for: Combined Communications, Inc.
 Search Channel: 230 Class: A Latt: 451418 Long: 1201105

Stn	Location	Ch	Cl	Brg	Dist	Req	Diff		
COND	Condon, OR	228	A	270	.	31.	-31.	Short	<u>--DELETE--</u>
KPDQ	Portland, OR	229	C	279.8	203.44	165.	38.44	OK	
KGSG	Pasco, WA	229	A	39.9	123.24	72.	51.24	OK	
KXIX	Bend, OR	231	C	219.3	170.14	165.	5.14	OK	
KJDY	Canyon City, OR	233	C	138.9	138.64	95.	43.6	OK	
KMCQ	The Dalles, OR	283	C	306.2	89.97	29.	60.97	OK	
<hr/>									
ADD	Madras, OR	227	C1	207.8	76.2	75	1.2	OK	<u>-ADD-</u>

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**EXHIBIT E-5
POPULATION COUNTS -
CLASS C1 CHANNELS TO SERVE MADRAS, OR**

Population within coverage area

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With data from 1990 census and 1998 update

	60dBu (1990)	60dBu (1998)	70dBu (1990)	70dBu (1998)
Muddy Broadcasting Ch 291C1 alternative	47,669	61,030	23,248	28,321
Combined Comm. Ch 227C1 alternative	46,997	60,085	22,854	27,793
Muddy Broadcasting Ch 291C2 alternative	30,688	38,040	8,885	10,767
Madras Broadcasting Ch 251C1 -orig. loc.	42,590	53,224	13,979	16,724
Madras Broadcasting Ch 251C1 -amended	34,451	41,467	13,582	16,067

Based on uniformly circular coverage contours, as per FCC policy for new allotments.
Distances to countours: 60dBu: 72.3km; 70dBu: 50.0km

**BROWN BROADCAST SERVICES
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CERTIFICATE OF SERVICE

I, Nancy Lee Kemper, a secretary in the law offices of Luvaas, Cobb, Richards & Fraser, P.C., certify that I have on this 6th day of January, 2001 sent by United States mail, postage prepaid, on behalf of Combined Communications, Inc., copies of the foregoing *Reply by Combined Communications, Inc. to Order to Show Cause* to:

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Shainis & Peltzman, Chartered
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Washington, DC 20036
Counsel for Madras Broadcasting

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Federal Communications Commission
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Nancy Lee Kemper