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June 5, 2001

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JUN 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Magalie R. Salas, Esq.  
 Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, S.W., Room TW-B204  
 Washington, D.C. 20554

Re: Reply Comments  
 MM Dkt. No. 01-27, RM-10056  
 Wisner, LA  
FM Table of Allotments

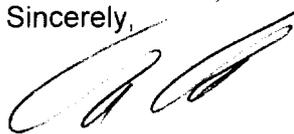
Dear Ms. Salas:

Transmitted herewith, on behalf of Wisner Broadcasting Company, are an original and four copies of its Reply Comments in the above-referenced rulemaking proceeding.

Additionally, attached is a copy of the filing with the notation "Please stamp and return to Fletcher, Heald & Hildreth." Please stamp the copy and return it to the courier.

If questions arise, please contact the undersigned attorney.

Sincerely,



Ann Bavender  
 Counsel for Wisner Broadcasting Company

Enclosure

cc: Certificate of Service

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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JUN 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 01-27  
Table of Allotments )  
FM Broadcast Stations ) RM-10056  
(Wisner, Louisiana) )

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

**REPLY COMMENTS**

Wisner Broadcasting Company ("WB"), by its attorney, hereby requests that the Commission dismiss a counterproposal submitted by Ruston Broadcasting Company, Inc. ("Ruston") on March 19, 2001<sup>1</sup> in the above-captioned rulemaking proceeding ("Counterproposal") since the Counterproposal was not technically correct at the time it was filed.<sup>2</sup>

In response to a Petition For Rulemaking filed by WB, the Commission, on February 2, 2001, released a Notice Of Proposed Rulemaking ("NPRM") proposing to allot FM Channel 300C3 to Wisner, Louisiana as Wisner's first local service. On March 19, 2001, WB filed Comments restating its interest in Channel 300C3 at Wisner.

On March 19, 2001, Ruston filed a defective Counterproposal which failed to comply with the Commission's minimum distance spacing requirements. Ruston

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<sup>1</sup>On May 21, 2001, the Commission issued Public Notice Report No. 2485, Petitions For Rulemaking Filed, requesting that reply comments to the counterproposal be submitted by June 5, 2001.

<sup>2</sup>On the same day, Ruston also submitted an identical counterproposal in MM Docket No. 01-19. WB additionally requests that the second counterproposal be dismissed for the same reasons set forth herein.

conceded that the Counterproposal was short-spaced to a pending proposal to add Channel 257C1 to Linden, Texas in MM Docket No. 00-228, Linden, White Oak, Lufkin, Corrigan, Mount Enterprise, and Pineland, Texas, and Zwolle, Louisiana (Linden Proposal"). It erroneously claimed the Counterproposal should be accepted because a request for approval to withdraw the Linden Proposal had been filed and Ruston believed the Linden proposal was defective and could be ignored.<sup>3</sup> Since, as conceded, the counterproposal failed to comply with the Commission technical requirements for allotment proposals at the time it was filed, it must be dismissed.

Long standing Commission policy dictates that allotment counterproposals must "be 'technically correct and substantially complete' at the time they are filed". *E.g. Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd. 2090, 2093 (Pol. & Rules Div. 1997), *affd.* 15 FCC Rcd. 11050 (Commission 2000); *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd. 13181, 13182 (Allocations Br. 1997), in each case citing, *e.g.*, *Fort Brag, California*, 6 FCC Rcd. 5817 (Allocations Br. 1991); *Provincetown, Dennis, Dennis Port, West Yarmouth and Harwich Port, Massachusetts*, 8 FCC Rcd. 19 (Pol. & Rules Div. 1992); *Sanford and Robbins, North Carolina*, 12 FCC Rcd. 1 (Allocations Br. 1997). The Commission has often warned that "it is Commission policy not to accept a proposal that is contingent upon final approval of changes involving other broadcast facilities." *Littlefield, Wolfforth and Tahoka, Texas*, 12 FCC Rcd. 3215, 3219 (Allocations Br. 1997), *relying upon Cut and Shoot, Texas*, 11

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<sup>3</sup>Counterproposal at fn. 3.

Rcd. 16383 (Pol. & Rules Div. 1996).<sup>4</sup> The Commission has also long made clear that its "policy is not to accept proposals that are dependent or contingent upon finality of other actions or proceedings." *Columbia City, Florida*, 14 FCC Rcd. 21165 n.1 (Allocations Br. 1999), *citing Cut and Shoot*.

Ruston's Counterproposal was not technically correct at the time it was filed and must be dismissed. When it was filed, on March 19, 2001, the Counterproposal was shortspaced to the Linden Proposal which had been cut-off on January 2, 2001 and remained pending. Although a request for approval to withdraw the Linden Proposal had been filed pursuant to Section 1.420(j) of the Commission's rules, as conceded by Ruston, the withdrawal request was still in place and had not been acted upon by the Commission at the time the Counterproposal was filed.<sup>5</sup> The Counterproposal, thus, when filed, was dependent upon Commission dismissal of the Linden Proposal in an unrelated rulemaking. Accordingly, pursuant to Commission precedent, it must be dismissed

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<sup>4</sup>In *Cloverdale, Montgomery and Warrior, Alabama*, 15 FCC Rcd. 11050, 11051 (Commission 2000), the Commission concurred in the policy adopted in *Cut and Shoot*.

<sup>5</sup>Although the Commission dismissed the Linden Proposal in its Report And Order in MM Docket No. 00-228, released May 18, 2001, the decision is not yet effective or final. Any rulemaking decision dismissing the Linden Proposal would have to have become final before Ruston could have filed its Counterproposal. *See Columbia City, Florida, supra*.

For the foregoing reasons, WB requests that the Counterproposal be dismissed as unacceptable for filing.

Respectfully submitted,

Wisner Broadcasting Company

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
(703) 812-0438  
June 5, 2001

By:

  
\_\_\_\_\_  
Ann Bavender  
Its Attorney

**CERTIFICATE OF SERVICE**

I, Carla Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 05<sup>th</sup> of June, 2001, a copy of the foregoing "Reply Comments" was mailed to the following by First Class U.S. Mail, postage prepaid:

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