

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments, FM)
Broadcast Stations.)
(Cheboygan, Rogers City, Bear Lake,)
Bellaire, Rapid River, Manistique,)
Ludington, Walhalla and Onaway,)
Michigan))
)

MM Docket No 00-69
RM-9850
RM-9945
RM-9946

To: Chief, Allocations Branch

OPPOSITION TO MOTION TO STRIKE

Lake Michigan Broadcasting, Inc. ("Lake Michigan"), licensee of broadcast radio station WKLA(FM), Ludington, Michigan, hereby submits its Opposition to the Motion to Strike ("Motion") filed by Fort Bend Broadcasting Company ("Fort Bend") in the above-captioned proceeding on July 26, 2001. In its Motion, Fort Bend contends that a portion of Lake Michigan's response to the Order to Show Cause in this proceeding¹ must be stricken from the record. Fort Bend's contention is wrong, and its Motion to Strike is an improper attempt to restrict Lake Michigan's response in this matter and thereby prevent the Commission from making an informed public interest determination in this proceeding.

¹ In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cheboygan, Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla and Onaway, Michigan), Order to Show Cause, MM Docket No. 00-69, DA 01-1184, released May 11, 2001 (hereinafter "Order to Show Cause").

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By its Order to Show Cause, the Commission instructed that Lake Michigan “SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 254A in lieu of Channel 292A” as proposed by Fort Bend’s counterproposal in the above-referenced proceeding.² Accordingly, per the Commission’s Order and pursuant to Section 316(a) of the Communications Act of 1934, as amended, Lake Michigan submitted its Response to the Order to Show Cause (“Response”) on July 2, 2001.

Contrary to Fort Bend’s assertion, unsupported by any rule or precedent, that Lake Michigan’s Response to the Commission’s Order “go[es] way beyond the issue of whether Channel 245A can be substituted for Channel 292A consistent with the Commission’s Rules and therefore must be stricken from the record,” Lake Michigan’s entire Response is completely germane to the issue of whether the modification of WKLA(FM)’s operating channel is in the public interest. Under Fort Bend’s counterproposal, forcing Lake Michigan to change WKLA(FM)’s long-used operating frequency is inextricably tied to whether the other various changes advocated by Fort Bend are collectively in the public interest. The Commission instructed Lake Michigan to show cause as to why WKLA(FM)’s license should not be modified to specify operation on Channel 254A in lieu of Channel 292A, so that the Commission may proceed with its “analysis of the counterproposals and the ultimate resolution of this proceeding.”³ Lake Michigan did precisely as the Commission requested and provided information explaining why modification of its license is not in the public interest. By its Response, Lake Michigan provided information enabling the Commission to better assess the

² Order to Show Cause at ¶ 5 (emphasis in original).

³ Order to Show Cause at ¶ 3.

public interest benefits and detriments of the various counterproposals in this proceeding, just as it was instructed to do.

Furthermore, nothing in the Commission's Order, or the Commission's Rules, limit Lake Michigan's response to less than a full review of the countervailing public interest considerations that the Commission is now being asked to balance. Indeed, Fort Bend is unable to cite any support for its assertion that any portion of Lake Michigan's Response is "unauthorized." Given that Lake Michigan's comments were submitted in response to the Commission's direct request for such information, it defies logic for Fort Bend to claim that Lake Michigan's Response to the Commission's Order is "unauthorized." Moreover, pursuant to Section 316(a) of the Communications Act of 1934, as amended, if the Commission proposes to modify a license or permit, the holder of that license or permit "shall be given reasonable opportunity... to protest such proposed order of modification."⁴

In addition, Fort Bend's attempt to delete a portion of Lake Michigan's Response as somehow untimely or unauthorized is disingenuous given that Fort Bend simultaneously filed untimely and unauthorized "Supplemental Comments" in the same proceeding suggesting a further change to the proposals under consideration. It is hard to imagine how Lake Michigan's response to a direct Commission inquiry can be claimed by Fort Bend to be unauthorized, while Fort Bend itself finds it perfectly appropriate to simultaneously put its own additional engineering and supplemental comments into the record.

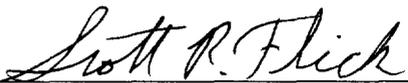
⁴ 47 U.S.C. § 316(a).

CONCLUSION

Fort Bend's Motion seeking to strike a portion of Lake Michigan's Response in this proceeding is specious and improper. Lake Michigan's comments were submitted in response to the Commission's Order to Show Cause in this matter and provide information specifically requested by the Commission to assist the Commission in assessing the various proposals at issue in this rulemaking. Fort Bend attempts to have its cake and eat it too by objecting to the scope of Lake Michigan's Response while at the same time submitting unauthorized comments supplementing the proposals set forth in this proceeding. Accordingly, Fort Bend's tenuous contention that a portion of Lake Michigan's Response is somehow "unauthorized" or "offending" is completely unsupported and its Motion must be rejected.

Respectfully submitted,

LAKE MICHIGAN BROADCASTING, INC.

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Date: August 3, 2001

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary in the law firm of Shaw Pittman LLP, do hereby certify that true copies of the foregoing **Opposition to Motion to Strike** were sent via U.S. Mail this 3rd day of August, 2001, to the following:

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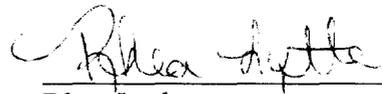
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***Via Hand Delivery**