

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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AUG 20 2001

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations.
(Quanah, Texas)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

) MM Docket No. 00-148
) RM - 9939
)

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

REPLY COMMENTS OF JOINT PARTIES

Next Media Licensing, Inc. ("NMLI"), First Broadcasting Company, L.P. ("FBC"), Capstar TX Limited Partnership ("Capstar"), Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), and Rawhide Radio, L.L.C. ("Rawhide") ("Joint Parties"), by their respective counsel, hereby submit this Reply in response to the Reply Comments of Maurice Salsa ("Salsa").¹ In addition, the Joint parties provide the consent statement of Sheldon Broadcasting Ltd., licensee of Station KLFX(FM), Nolanville, Texas.

1. Salsa alleges that the Joint Parties' counterproposal, which was timely filed on October 10, 2000 in this proceeding, was defective because of a conflicting and previously filed application for a one-step upgrade to Station KICM, Krum, Texas from Class C2 to C1. However, this is not a defect in the counterproposal. Under the Commission's rules, a counterproposal that is in conflict with an application can be considered if it is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice. *See Note to Section 73.208 of the Commission's Rules; Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993).* The Joint Parties have, in fact, submitted a separate reply comment resolving any conflict between their

1. Salsa filed his Reply Coments on August 13, 2001. This Reply is timely filed pursuant to the Public Notice, Report No. 2500 (rel. August 3, 2001) in the above-captioned proceeding.

counterproposal and the KICM Class C1 application.² Furthermore, the Commission has not thus far identified the pending KICM application as a conflicting proposal because that application was not listed in the August 3, 2001 Public Notice or any other notice in this proceeding.

2. Moreover, the Joint Parties had sufficient basis at the time the counterproposal was filed for their statement that they “expect that the Class C1 application will be dismissed shortly.” At the time the counterproposal was filed, the KICM Class C1 application had already been opposed on the ground that it was a contingent application in violation of Section 73.3517 of the Commission’s Rules. KICM’s later amendment of its application to a non-contingent site was short-spaced to the earlier-filed counterproposal, although the resolution that has now been reached will allow KICM’s Class C1 application to go forward.

3. Salsa recites the general rule that a counterproposal must be technically correct when filed. That principle derives from the potential for prejudice that can arise in the procedural context of a counterproposal. However, the Commission can and does accept curative amendments, even to counterproposals. *See Boalsburg, Pennsylvania, et al.*, 7 FCC Rcd 7653, 7654 n.7 (1992); *Scottsboro, Alabama, et al.*, 6 FCC Rcd 6111, 6112. Acceptance of a curative amendment is particularly compelling when no other party is prejudiced thereby. That is the case here. All proposals in this proceeding can be granted due to the availability of an alternate channel for the Quanah petitioner.³ No party is prejudiced by, and the public interest is promoted by, consideration of a resolution that allows all pending proposals to be granted, with accompanying benefits in increased service.

4. Salsa would not be prejudiced by acceptance of a resolution in this proceeding, either. Salsa’s stated motive for attacking the Joint Parties’ counterproposal is that his petition for a new

2. See Reply Comments filed by the Joint Parties on August 20, 2001.

3. The Quanah petitioner accepted the alternate channel in a previous filing.

allotment at Shiner, Texas, filed on April 6, 2001, conflicts with the counterproposal.⁴ However, as the Joint Parties pointed out in comments in the Shiner proceeding (MM Docket No. 01-105), that effort is doomed to failure. The Joint Parties' counterproposal was timely filed, and even if it were subsequently determined to be defective, which it is not, it still precludes Salsa's later-filed petition for Shiner. The Commission has previously spoken to this precise issue. *Mason, Menard, and Fredericksburg, Texas*, 15 FCC Rcd 12618, 12619-20 (2000). Accordingly, Salsa's Shiner petition is facially defective, and must be dismissed no matter what the eventual outcome of the Quanah proceeding might be.

5. Salsa cannot have it both ways. He argues on one hand that the Joint Parties' counterproposal is defective because of a conflict with a previously filed application, but by the same token, Salsa's Shiner petition would have to be dismissed as well. Of course, if Salsa argues that his Shiner petition becomes acceptable once the conflict is removed, then he would have to admit that the Joint Parties' counterproposal is acceptable for the same reason. Since, as discussed above, any conflict that may have existed between the Joint Parties' counterproposal and the KICM Class C1 application has been removed, the Commission should proceed to act on the counterproposal in this proceeding and dismiss the Shiner proposal.

6. As a separate matter, in the Joint Parties' counterproposal, the licensee had not consented to a change in channel only for Station KLFX(FM), Nolanville, Texas. Instead the Joint Parties asked the Commission to issue an order to show cause to this licensee. The licensee has now consented to the change in channel. See attached Consent Statement. Thus an order to show cause is no longer needed.

4. The Commission may have failed to note the conflict because the Joint Parties' counterproposal had not been entered into the Commission's FM data base at the time it issued the Notice of Proposed Rule Making in the Shiner proceeding.

WHEREFORE, Salsa's request for unfavorable action on the Joint Parties' counterproposal should be denied.

Respectfully submitted,

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August 20, 2001

**Station KLFX(FM)
Nolanville, Texas**

Sheldon Broadcasting, Ltd. ("Sheldon"), licensee of Station KLFX(FM), Nolanville, Texas, hereby agrees to have Station KLFX's license modified to change its channel from Channel 297A to Channel 249A. Should the Federal Communications Commission ("FCC") grant the proposed rule making to change KLFX's channel, Sheldon will promptly file an application to implement the change.

I understand this statement may be used in a filing with the FCC and hereby authorize its use for that purpose. I verify that this statement is true and accurate to the best of my knowledge, information and belief and is made in good faith.

SHELDON BROADCASTING, LTD.

By: *Ken Williams*

Title: Vice-President of General Partner

Date: August 15, 2001

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 20th day of August, 2001 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

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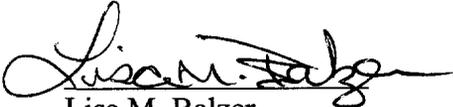
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