

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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.)
(Quanah, Archer City, Converse, Flatonia,)
Georgetown, Ingram, Keller, Knox City,)
Lakeway, Lago Vista, Llano, McQueeney,)
Nolanville, San Antonia, Seymour, Waco and)
Wellington, Texas, and Ardmore, Durant,)
Elk City, Healdton, Lawton and Purcell,)
Oklahoma.))

MM Docket No. 00-148
RM-9939
RM-10198

TO: John A. Karousos, Chief
Allocations Branch, Policy and Rules Division
Mass Media Bureau

OPPOSITION TO "FURTHER MOTION FOR EXTENSION OF TIME"

1. Elgin FM Limited Partnership and Charles Crawford ("Elgin FM/Crawford") hereby oppose the "Further Motion for Extension of Time" ("Further Motion") filed by First Broadcasting Company, L.P., Rawhide Radio, LLC, Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licensees, Inc. (the "Joint Parties") on April 1, 2002 in the above-captioned proceeding.

2. The circumstances giving rise to the Further Motion are seemingly very, very simple. The Counterproposal submitted in the above-captioned proceeding by the Joint Parties depends in significant part on the proposed substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas. That substitution, however, would be short-spaced to Channel 229C1 at Krum, Texas. The Krum channel was upgraded to Class C1 status on August 20, 2001 (File No. 20000725AAZ). The short-spacing was revealed by the Commission's own engineering analysis;

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it was also called to the Commission's attention by several commenting parties.

3. In response the Joint Parties asserted, in Reply Comments filed substantially after the deadline for filing their counterproposal, that the Krum licensee would downgrade its channel back to Class C2 status pursuant to an agreement (presumably with one or more of the Joint Parties). The Joint Parties expressly and explicitly asserted that that agreement was *not* subject to the terms of Section 1.420(j) of the Commission's Rules. See Joint Parties' Reply Comments, filed August 20, 2001, at (unnumbered) 2.

4. By Request for Supplemental Information, DA 02-158, released January 18, 2002, the Chief, Allocations Branch, advised the parties that the Commission's staff is of the opinion that a downgrading of the Krum channel as described by the Joint Parties *would* be subject to the terms of Section 1.420(j). Accordingly, the Joint Parties were directed to "submit the underlying agreement with [the Krum licensee] as well as the other documentation required by Section 1.420(j) of the Rules." The Joint Parties were also advised that they "may" file written submissions concerning the applicability of Section 1.420(j) of the Rules to this proceeding. The Joint Parties were given more than 40 days (until February 28) in which to respond.

5. To summarize, then, the Joint Parties said that they have an agreement with the Krum licensee which would eliminate an otherwise fatal flaw in their Counterproposal. The Commission asked the Joint Parties to provide a copy of that agreement. Since the agreement in question is presumably within the possession and control of the Joint Parties, Elgin FM/Crawford assumed that the Joint Parties would file a copy of the agreement promptly, and certainly within the 40-day period initially established by the Commission.

7. Elgin FM/Crawford were wrong.

8. Instead, the Joint Parties sought 30 more days, supposedly to permit them to undertake "ongoing efforts to obtain information which will enable them to more fully respond to

the information requested by the Commission." In seeking that first extension, the Joint Parties did not tender a copy of the agreement with the Krum licensee, nor did they explain why they were not then able to submit a copy of that agreement or, if they were in fact able to do so, why they chose not to.

9. And now the Joint Parties are asking for yet another 30-day extension, and they *STILL* haven't submitted the agreement. Elgin FM/Crawford submit that, as a bare minimum, the Commission should require the Joint Parties to submit the agreement immediately or have their Counterproposal dismissed for failure to prosecute.

10. The Commission's Request for Supplemental Information could not have been clearer. The Commission wants to see the agreement with the Krum licensee. It cannot be difficult for the Joint Parties to photocopy the agreement, stick it in an envelope, and send it to the Commission in compliance with the Commission's Request (with appropriate service copies sent to other parties to the proceeding, of course). And yet, here we are, three months after the Commission's request: not only have the Joint Parties failed to provide the agreement, but they appear intent upon continuing to withhold the document for at least another month.

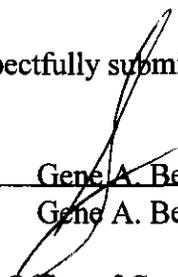
11. Elgin FM/Crawford recognize that the Joint Parties may also wish to provide legal arguments concerning the agreement including possibly the claim that the agreement is not subject to Section 1.420(j). But Elgin FM/Crawford are at a loss to understand why the preparation of such arguments should take months. The Joint Parties apparently entered into the agreement in question at least eight-nine months ago, and possibly more. We know that as early as August, 2001, and possibly earlier, they had considered the question of whether the agreement would be subject to the Commission's rules, because in their Reply Comments (filed August 20, 2001) in which they apprised the Commission of the existence of the agreement, they flatly asserted that the agreement "comple[d] fully with the Commission's Rules", *including in*

particular Section 1.420(j). See Joint Parties' Reply Comments, filed August 20, 2001, at (unnumbered) 2. If the Joint Parties were sufficiently confident in the rightness of their position to make that express claim to the Commission in August, 2001, why can they not share the basis for their opinion now, without further delay?

12. Elgin FM/Crawford are particularly concerned that the Joint Parties may be using the additional time *not* to develop information responsive to the Request for Supplemental Information, but rather to develop some further strategy to avoid, or distract from, the adverse effects arising from the Krum agreement. As discussed above, the Joint Parties' stated purpose for the extensions ("to obtain information which will enable them to fully response to the information requested by the Commission") is hard to take seriously on its face, since both the Krum agreement and the basis for the Joint Parties' express representation concerning the supposed non-applicability of Section 1.420(j) should have been readily available for immediate submission to the Commission months ago. It is therefore not at all illogical for Elgin FM/Crawford to suspect that the time sought by the Joint Parties is being used for some other purpose.

12. Accordingly, for the reasons stated, Elgin FM/Crawford hereby oppose the Further Motion for Extension of Time.

Respectfully submitted,

/s/  Gene A. Bechtel
Gene A. Bechtel

Law Office of Gene Bechtel, P.C.
1050 Seventeenth Street, N.W. - Suite 600
Washington, D.C. 20036
(202) 496-1289

April 16, 2002

CERTIFICATE OF SERVICE

I, Gene A. Bechtel, hereby certify that on this 16th day of April, 2002, I caused copies of the foregoing "Opposition to 'Further Motion for Extension of Time'" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

NationWide Radio Stations
Marie Drischel, General Partner
496 Country Road
Suite 308
Big Creek, Mississippi 38914

Station KXOO
Paragon Communications, Inc.
P.O. Box 945
Elk City, Oklahoma 73648

Vincent A. Pepper, Esquire
Pepper & Corazzini, LLP
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for Windthorst Radio
Broadcasting Company

Station KKAJ
Chuckie Broadcasting Co.
Box 429
1205 Northglen
Ardmore, Oklahoma 73402

Station KSEY
Mark V. Aulabaugh
Box 471
Seymour, Texas 76380

Timothy Brady, Esquire
P.O. Box 71309
Newnan, Georgia 30271-1309
Counsel for Chuckie Broadcasting
Co.

Station KLRK
KRZI, Inc.
1018 N. Valley Mill Drive
Waco, Texas 76710

Stations KGOK and KICM
AM & PM Broadcasting LLC
5946 Club Oaks Drive
Dallas, Texas 75248

Station KRZB
Texas Grace Communications
P.O. Box 398
Wichita Falls, Texas 76307

Robert L. Thompson, Esquire
Thiemann Aitken & Vohra, L.L.C.
908 King Street
Suite 300
Alexandria, Virginia 22314
Counsel for AM & PM
Broadcasting, LLC

Lee Peltzman, Esquire
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036
Counsel for KRZI, Inc.

Sheldon Broadcasting, Ltd.
P.O. Box 1996
Temple, Texas 76502

Dan J. Alpert, Esquire
Law Office of Dan J. Alpert
2120 North 21st Street
Suite 400
Arlington, Virginia 22201
Counsel for Fritz Broad-
casting Co. Inc.

David P. Garland, President
Stargazer Broadcasting, Inc.
P.O. Box 519
Woodville, Texas 75979

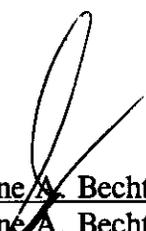
Maurice Salsa
5615 Evergreen Valley Drive
Kingwood, Texas 77345

Bryan A. King
BK Radio
1809 Lightsey Road
Austin, Texas 78704

Matthew L. Leibowitz, Esq.
Leibowitz & Associates, P.A.
One SE Third Avenue, Suite 1450
Miami, Florida 33131
Counsel for Next Media Licensing, Inc.

Gregory L. Masters, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Capstar TX LP and
Clear Channel Broadcast Licenses, Inc.

Mark N. Lipp, Esq.
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W., Suite 800
Washington, D.C. 20005
Counsel for First Broadcasting Company,
L.P. and Rawhide Radio, L.L.C.

/s/ 
Gene A. Bechtel