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FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

APR 26 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re: )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 00-148  
Table of Allotments )  
(Quanah, TX et al.) )

To: John Karousos, Assistant Chief,  
Audio Division of the Media Bureau

STATEMENT OF AM & PM BROADCASTERS, LLC

AM & PM Broadcasters, LLC ("AM & PM"), an "interested party" to the captioned "Quanah" rulemaking proceeding, <sup>1/</sup> respectfully submits this "Statement" in response to the "Request for Supplemental Information," issued by the [former] Chief of the Allocations Branch on January 18, 2002 ("Request"). <sup>2/</sup>

Background

On July 25, 2000, AM & PM filed a one-step application to upgrade KICM (FM) to a "Class C-1" facility to serve Krum, TX (BMPH-20000725AAZ). That application was granted on August 20, 2001, modifying a permit that does not expire until July 24, 2003.

<sup>1/</sup> The "agreement" between AM & PM and the Joint Parties in the Quanah rulemaking proceeding is the very subject of the Branch's January 18, 2002 "Request."

<sup>2/</sup> AM & PM has deferred the filing of this "Statement," at the request of the Joint Parties and because counsel for the Joint Parties has indicated that the FCC staff informally has agreed to the extensions of time filed by the Joint Parties. In the event that this reliance is misfounded, AM & PM respectfully requests leave to file this Statement in the interest of a full and complete record in this complex proceeding. See 47 CFR 1.415(d) (FCC has discretion to authorize useful pleadings). *OTH*

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AM & PM was contacted last year by the Joint Parties to the above-captioned "Quanah, TX" rulemaking proceeding to discuss the Joint Parties' proposal that AM & PM enter into a contingent agreement, in which AM & PM would be willing to file a downgrade application for KICM (FM) in the future BUT ONLY if the FCC were to conclude, in a final order, that the public interest favors a grant of the Joint Parties' Counterproposal in the Quanah rulemaking proceeding.

Following its review of all the pertinent factors, AM & PM executed a limited, contingent agreement with the Joint Parties. It agreed that, should the FCC promptly conclude in the Quanah rulemaking proceeding that the public interest best would be served by a grant of the Counterproposal, then and only at that future time would AM & PM be willing to submit an application to downgrade KICM (FM) to a Class C-2 facility to serve Krum, TX.

To ensure that this contingent agreement would not impede AM & PM's ability to construct the Class C-1 facility to serve Krum if the FCC did not promptly grant the Joint Parties' Counterproposal, AM & PM's agreement with the Joint Parties expressly provides that it expires on June 30, 2002, more than a year prior to the expiration of AM & PM's authority to construct the Class C-1 facility for KICM (FM).

#### Discussion

The Request asserts the Branch's initial "view" that "an agreement to file a subsequent application to downgrade an allotment" is a "withdrawal of interest" for purposes of Section 1.420

and 73.3584 of the Rules. See Request at para. 3.<sup>3/</sup> The Request even implies that such an agreement should be evaluated under FCC decisions regarding "abuses" of FCC processes. Id.

AM & PM, the licensee of station KICM (FM) and the holder of a permit to upgrade KICM (FM) to a Class C-1 facility serving Krum, TX, respectfully submits that the Branch may not fully grasp the limited nature of AM & PM's agreement in this case and, in any event, categorically denies that it has abandoned or "withdrawn its interest" in operating KICM as a Class C-1 facility.

First, the Branch's "view" appears to be based on a misunderstanding of the operative facts. AM & PM entered into only a limited, contingent agreement with the Joint Parties. AM & PM has neither withdrawn its interest in constructing a Class C-1 facility for KICM (FM) nor has it made an unconditional pledge to file, now or in the future, an application seeking to downgrade KICM (FM) to a Class C-2 facility. Rather, AM & PM merely has agreed that, should the FCC weigh all of the relevant factors and conclude that the public interest favors a grant of the Joint Parties' Counterproposal in the Quanah rulemaking proceeding, then and only then would AM & PM be willing to file an application to downgrade KICM (FM) to a Class C-2 facility. Thus, AM & PM has not "withdrawn" its interest in constructing KICM (FM) as a Class C-1 facility but, rather is willing to take certain

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<sup>3/</sup> The Request cites no precedential authority for its initial "view."

action in the future only on the contingent future condition that the FCC concludes that the public interest compels a grant of the Joint Parties' Counterproposal. Cf. Swan Creek Communications v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994) (no misrepresentation by applicant of its continuing interest to construct a station for which it held a permit, even where the applicant entered into negotiations to sell an unbuilt station within "mere days" after the FCC issued its initial permit); accord Garden State Broadcasting, L.P. v. FCC, 996 F.2d 386,393 (D.C. Cir. 1993).

Second, AM & PM's agreement with the Joint Parties is narrowly drafted to ensure that AM & PM's ability to construct its Class C-1 facility for KICM (FM) is not compromised by delays in the resolution of the Quanah rulemaking proceeding. Thus, although AM & PM's agreement essentially leaves it to the FCC to decide whether the public interest favors a grant of the Joint Parties' Counterproposal, AM & PM is unwilling to compromise its continuing interest in constructing the C-1 by granting the Joint Parties carte blanche in the Quanah rulemaking proceeding. Rather, the agreement pointedly limits AM & PM's contingent future consent to a very narrow "window" of time during which the Joint Parties could urge the FCC to act favorably on their Counterproposal. To ensure that this contingent agreement would not impede AM & PM's ability to construct the Class C-1 facility to serve Krum, should the FCC not promptly grant the Joint Parties' Counterproposal, AM & PM's agreement with the Joint Parties expressly provides that it expires on June 30, 2002, more than a year prior

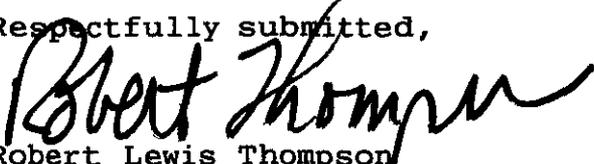
to the expiration of AM & PM's authority to construct the Class C-1 facility for KICM (FM). Thus, not only is AM & PM's agreement with the Joint Parties a contingent one, it is carefully restricted as to its potential efficacy. These factors plainly negate any inference that AM & PM has abandoned or "withdrawn" its interest in constructing the Class C-1 facility for KICM (FM).

Finally, AM & PM has taken concrete steps toward the construction of the Class C-1 facility by July 24, 2003, that also belies any inference that it has "withdrawn" its interest in constructing the Class C-1 facility. For example, AM & PM has been engaged since last year in discussions with the owner of the tower at the Class C-1 antenna site concerning both the precise terms of a lease and also the substantial cost of coaxial cable that will be required at this tall tower. See Statement of Richard Witkovski, attached hereto as Appendix A. Moreover, AM & PM has considered not only the equipment that will be needed for the Class C-1 facility but also the likely sources of that equipment. Id. Thus, even though AM & PM's permit does not require construction of the Class C-1 facility for another fifteen (15) months, AM & PM already has undertaken initial planning for its facility -- a course of action that is palpably inconsistent with any inference or "view" that AM & PM has "withdrawn" its interest in constructing KICM (FM)'s Class C-1 facility.

Conclusion

After learning all of the facts, the staff should alter its initial "view" that the Joint Parties' agreement with AM & PM constitutes a "withdrawal" of AM & PM's interest in constructing KICM (FM)'s C-1 facility. Then, upon weighing all of the relevant factors, should the FCC promptly conclude that the public interest would best be served by a grant of the Joint Parties' Counterproposal, then and only then will AM & PM submit an application to downgrade its Class C-1 facility. Otherwise, AM & PM intends to construct KICM (FM)'s Class C-1 facility before the permit expires on July 24, 2003. <sup>4/</sup>

Respectfully submitted,

  
Robert Lewis Thompson  
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(703) 836-9400

Counsel for AM & PM Broadcasters, LLC

April 26, 2002

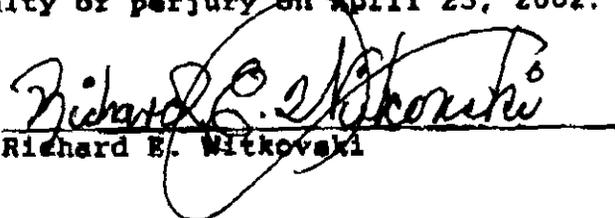
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<sup>4/</sup> AM & PM notes that, following the release of the staff's Request on January 18, 2002 and more than a year after the deadline for Counterproposals in the Quannah rulemaking proceeding, "The Sister Sherry Lynn Foundation, Inc." [licensee of noncommercial KFXT (FM) at Sulphur, OK] purported to file a "Comments and Counterproposal" in this proceeding. AM & PM agrees with the characterization of that pleading made by M & M Broadcasters, Ltd. (see "Opposition to Further Motion for Extension of Time," filed April 16, 2002, at para. 4) as "utterly unauthorized (and untimely) and unacceptable." AM & PM would add to that characterization that it is patently disingenuous, as at least two noncommercial frequencies are available at Throckmorton, TX, if the Sister Sherry Lynn Foundation is sincere about constructing a "first local service" at that community. See Appendix B hereto.

## Appendix A

1. My name is Richard Witkovski and I am the Managing Member of AM & PM Broadcasters, LLC ("AM&PM"), licensee of KICM (FM), Healdton, OK and permittee of KICM (FM), Krum, TX.
2. I categorically deny any assertion that AM&PM has withdrawn its interest in or its present intention to construct the Class C-1 FM facility for KICM, authorized by a permit issued to AM&PM, which does not expire until July 24, 2003.
3. The conditional agreement executed last year with the Joint Parties to the "Quanah, TX" rulemaking proceeding (MB Docket No. 00-148) does not negate AM&PM's intentions. First, it is contingent on the FCC's finding that the public interest warrants a grant of the Joint Parties' Counterproposal; only in the contingent circumstances that the FCC makes that public interest determination would AM&PM be willing to abandon its intention to construct its C-1 facility for KICM (FM). Second, AM&PM has carefully restricted the period of time within which it is prepared to subordinate its interest in constructing the Class C-1 facility to the FCC's public interest determination in the Quanah proceeding; the agreement with the Joint Parties expires more than a year before AM&PM's Class C-1 permit expires, thus affording AM&PM with sufficient time to construct the Class C-1 facility.
4. Finally, AM&PM already has taken steps to construct the Class C-1 facility. Since last year, AM&PM has been engaged in

discussions with the owner of the tower at the Class C-1 facility's antenna site regarding both the terms of a lease and also about the substantial cost of coaxial cable that will be required at this tall tower. AM&PM also has considered not only the equipment that will be needed for the Class C-1 facility but also the likely sources of that equipment. In short, AM & PM has undertaken initial planning for the construction of the C-1 facility. Executed under penalty of perjury on April 23, 2002.

  
Richard E. Witkowski

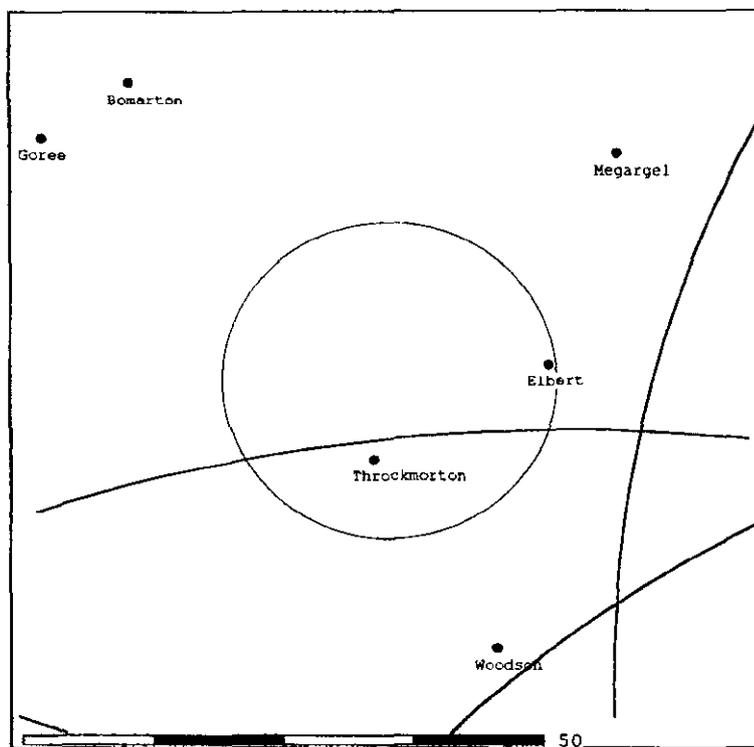
Appendix B

Throckmorton, Tx

FMCONT<sup>(TM)</sup> LOCATE STUDY

Ch 206 A  
89.1 MHz

N. Lat. 33 15 08  
W. Lng. 99 09 51



Scale= 1:664,063

V-Soft Comm ©

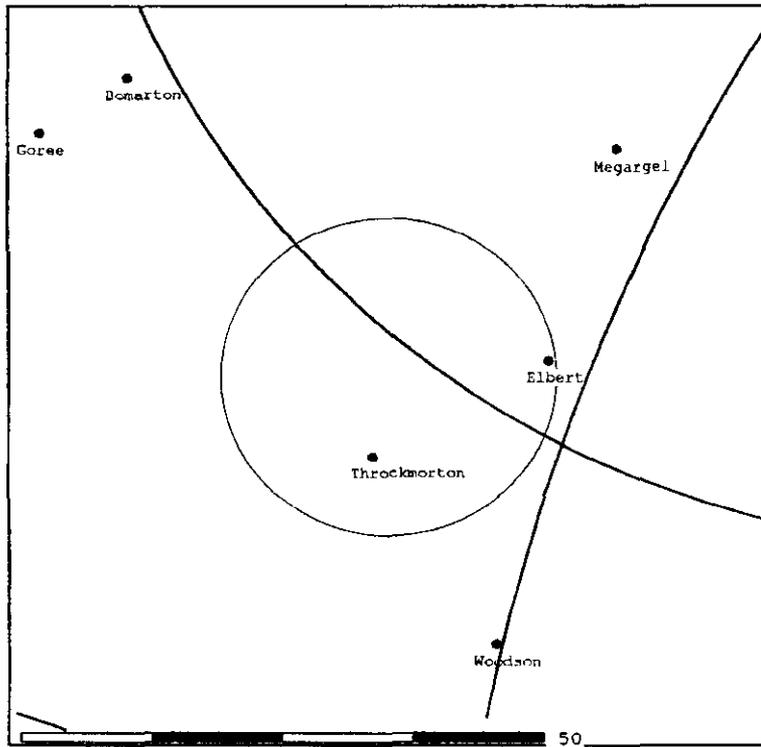
Call	CH#	Location		D-KM	Azi	FCC	Margin
ALLO.V	205C	Brownwood	TX	170.76	174.3	165.0	5.76
KSQX	206A	Springtown	TX	139.46	102.1	115.0	24.46
980122	206A	Stephenville	TX	145.43	143.9	115.0	30.43
980122	206A	Stephenville	TX	145.43	143.9	115.0	30.43
KYCU.C	206C1	Clinton	OK	243.70	3.7	200.0	43.70
KACU	209C2	Abilene	TX	99.90	210.5	55.0	44.90
KMOC	208C3	Wichita Falls	TX	92.45	38.6	42.0	50.45
KOHM.A	206C1	Lubbock	TX	256.19	279.0	200.0	56.19
KOHM	206C1	Lubbock	TX	256.19	279.0	200.0	56.19
971117	203C3	Weatherford	TX	105.27	116.8	42.0	63.27
KMCU.C	204A	Wichita Falls	TX	94.37	35.6	31.0	63.37
KLUR	260C1	Wichita Falls	TX	92.45	38.6	22.0	70.45
ALLO.U	260C1	Wichita Falls	TX	92.45	38.6	22.0	70.45
AP205	205C3	Cache	OK	159.58	15.7	89.0	70.58
980512	203A	Mineral Wells	TX	110.52	116.1	31.0	79.52
KNON	207C1	Dallas	TX	217.76	109.2	133.0	84.76
KPBE	207A	Brownwood	TX	164.79	168.6	72.0	92.79
KPBE.C	207A	Brownwood	TX	164.79	168.6	72.0	92.79
KCCU	207A	Lawton	OK	173.12	28.1	72.0	101.12
KBCY	259C1	Tye	TX	128.47	223.5	22.0	106.47
KYQX	208A	Weatherford	TX	138.91	113.3	31.0	107.91
ALLO.U	259C1	Tye	TX	132.54	217.5	22.0	110.54

Throckmorton, Tx

FMCNT<sup>(TM)</sup> LOCATE STUDY

Ch 207 A  
89.3 MHz

N. Lat. 33 15 08  
W. Lng. 99 09 51



Scale= 1:664,063

V-Soft Comm ©

Call	CH#	Location		D-KM	Azi	FCC	Margin
KMOC	208C3	Wichita Falls TX		92.45	38.6	89.0	3.45
KNON	207C1	Dallas TX		217.76	109.2	200.0	17.76
KACU	209C2	Abilene TX		99.90	210.5	55.0	44.90
KPBE	207A	Brownwood TX		164.79	168.6	115.0	49.79
KPBE.C	207A	Brownwood TX		164.79	168.6	115.0	49.79
ALLO.A	261A	Breckenridge TX		61.33	157.1	10.0	51.33
RADD	261A	O'brien TX		66.42	285.8	10.0	56.42
KCCU	207A	Lawton OK		173.12	28.1	115.0	58.12
KMCU.C	204A	Wichita Falls TX		94.37	35.6	31.0	63.37
KYQX	208A	Weatherford TX		138.91	113.3	72.0	66.91
KSQX	206A	Springtown TX		139.46	102.1	72.0	67.46
KLUR	260C1	Wichita Falls TX		92.45	38.6	22.0	70.45
ALLO.U	260C1	Wichita Falls TX		92.45	38.6	22.0	70.45
980122	206A	Stephenville TX		145.43	143.9	72.0	73.43
980122	206A	Stephenville TX		145.43	143.9	72.0	73.43
ALLO.V	205C	Brownwood TX		170.76	174.3	95.0	75.76
KWKL.C	210C3	Grandfield OK		132.43	30.8	42.0	90.43
KYCU.C	206C1	Clinton OK		243.70	3.7	133.0	110.70
AP205	205C3	Cache OK		159.58	15.7	42.0	117.58
AP208	208C1	Carnegie OK		252.87	18.5	133.0	119.87
980226	207A	San Angelo TX		236.10	208.8	115.0	121.10
KOHM	206C1	Lubbock TX		256.19	279.0	133.0	123.19

Certificate of Service

I, Robert Lewis Thompson, do certify that on this 26th day of April, 2002, I served copies by first class mail (prepaid) on the following counsel/parties of record:

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