

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 98-155 |
| Table of Allotments, |) | RM-9082 |
| FM Broadcast Stations |) | RM-9133 |
| (Alva, Mooreland, Tishomingo, Tuttle, and |) | |
| Woodward, Oklahoma) |) | |
| To: The Commission | | |

REPLY
TO OPPOSITION TO
SUPPLEMENT TO APPLICATION FOR REVIEW

Ralph Tyler ("Tyler"), by his attorneys, and pursuant to Section 1.115 of the Commission's Rules, respectfully replies¹ to the "Opposition to Supplement to Application for Review" filed May 8, 2002, by Chisholm Trail Broadcasting Co., Inc. ("Chisholm Trail") directed against Tyler's April 30, 2002, pleading filed to supplement his Application for Review filed May 31, 2001, wherein Tyler requested the Commission to review the action of the Chief, Allocations Branch², made under delegated authority in the Report and Order, *Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma*, DA 00-2885, released December 22, 2000, 65 Fed. Reg. 82296, published December 28, 2000 (herein "*R&O*"), *recon. denied* Memorandum Opinion and Order, released April 13, 2001, 66 Fed. Reg. 21681, published May 1, 2001 (herein *MO&O*). The *R&O* denied Tyler's petition for rule making that sought to reallocate FM Channel

¹ This Reply is timely filed by May 20, 2002 (See Sections 1.4(g) and 1.4(c) of the Commission's Rules.

² Now Assistant Chief, Audio Services Division, Media Bureau.

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259C3 from Tishomingo to Tuttle, Oklahoma.³ Tyler supplemented his Application for Review to report that events have occurred and circumstances have changed since Tyler's last opportunity to present such matters to the Commission. Tyler showed that Station KAZC, Tishomingo, Oklahoma, has commenced program tests using its higher powered (Class C2) facilities, which will provide a complete replacement for Station KTSH, when that station is moved from Tishomingo to Tuttle, Oklahoma, and that if the Commission were to deny Tyler's application for review, Tyler could raise these matters again in a petition for reconsideration of the Commission's action.

Chisholm Trail's reliance on *Colorado Radio Corp. v. FCC*⁴ is misplaced. This is not a case in which Tyler has merely sat back and hoped that the decision would be in his favor and then, when it wasn't, parried with an offer of more evidence. This is a case in which, as the result of recent actions by the FCC and the licensee of Station KAZC, there has been a genuine change in the facts and circumstances pertaining to the proposed Tuttle allotment. Thus, the evidence that Tyler proffers is genuinely new - it didn't exist at the time of the staff decision. The public interest demands that this new evidence be taken into account. Failure to do so would mean that this case would be decided on the basis of obsolete information that has been superseded by new events.

Chisholm Trail's thirty-page Opposition, replete with the same attachments to which Tyler has responded and answered previously in this proceeding, doesn't dispute the new facts provided in Tyler's Supplement. Chisholm Trail argues, "Tyler would not be prejudiced by an affirmance of the *R&O* and *MO&O* because he would be free to re-file his allotment proposal

³ Chisholm' Trail's Opposition also constitutes an Opposition to the Motion, filed by Tyler on April 30, 2002, in which Tyler asked for leave to file his Supplement. (See Opposition, Footnote 1).

⁴ 118 F. 2d 24, 26 (D. C. Cir. 1941).

and incorporate the changes which have occurred over the last three and one-half years.” Chisholm Trail (1) fails to note that new matters have arisen that, if considered in this proceeding, could change the Commission’s decision; (2) ignores the waste of Commission resources that would result from plowing the same legal ground again; and (3) fails to acknowledge that the three and one-half years that have elapsed are due in large part to its frantic, unwarranted, and mean-spirited opposition to Tyler’s proposal.

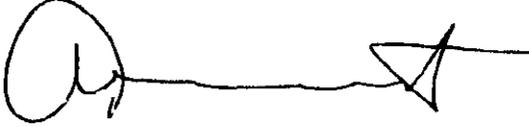
Tyler disputes Chisholm Trail’s claim that Tyler’s noting that lack of satisfactory replacement service for KTSH is the “sole basis” for denial of his proposal is “inaccurate and misleading” and that Tyler has engaged in a “scheme to defraud the Commission.” Chisholm Trail argues that the matters it attempted to raise contributed to the decision. On the contrary, Chisholm Trail even quotes the portion of the *R&O* that “resolution of [the matters raised by Chisholm Trail] in the context of this proceeding is not necessary prior to the resolution of this proceeding in light of our decision herein.” From this quotation alone, it is clear that the Allocations Branch did not base its decision on the extraneous matters raised by Chisholm Trail. Chisholm Trail’s Opposition doesn’t provide any new facts - it is simply a rehash of arguments previously made by Chisholm Trail, accompanied by documents previously furnished to the Commission by Chisholm Trail. Its Opposition contains nothing that bears on the issue of whether or not the Commission can and should consider the new facts supplied in the Supplement. Therefore, the Commission should reject Chisholm Trail’s Opposition, and, as Tyler has asked, take cognizance of the fact that Station KAZC, Tishomingo, Oklahoma, is now operating with its improved facilities, which will provide a replacement service to Tishomingo, when Station KTSH moves to Tuttle.

Chisholm Trail having provided nothing in its Opposition that would provide a basis to do otherwise, Tyler renews his request that the Commission reverse the action of the Allocations

Branch, and reallocate Channel 259C3 to Tuttle as that community's first aural service and modify the license of KTSH for operation at Tuttle.

Respectfully submitted,

RALPH TYLER

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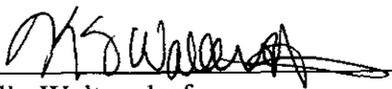
CERTIFICATE OF SERVICE

I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., certify that on this 20th day of May, 2002, copies of the foregoing Supplement to Application for Review were mailed, postage prepaid, to the following:

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