

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

AUG 13 2002

In the Matter of:)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations,)
(Arlington, The Dalles, and Moro)
Oregon, and Covington and Trout)
Lake, Washington))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 02-136
RM - 10458

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

**REPLY COMMENTS
OF
BAY CITIES BUILDING COMPANY, INC.**

Bay Cities Building Company, Inc. ("Bay Cities"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 02-1339, released June 7, 2002)* ("NPRM"), hereby submits these Reply Comments to the "Comments and Counterproposal of New Northwest Broadcasters, LLC" filed in this proceeding on July 29, 2002. In support hereof, Bay Cities submits the following:

1. Bay Cities is the licensee of Radio Station KDCQ-FM (Channel 228A, 93.5 MHz) at Coos Bay, Oregon. Bay Cities was not one of the joint petitioners with regard to the original petition for rule making in this proceeding.

2. In response to the NPRM, New Northwest Broadcasters, LLC ("New Northwest") submitted comments and a counterproposal seeking the substitution of Channel 225A for Channel 228A for use by KDCQ-FM at the

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current KDCQ-FM transmitting site. New Northwest proposes this channel substitution to accommodate an intricate counterproposal impacting nine communities in Oregon and Washington.

3. Attached hereto is the brief technical statement of Jefferson G. Brock of Graham Brock, Inc., wherein it is verified that Channel 228A can be substituted for Channel 225A for use by KDCQ-FM in compliance with the requisite Commission rules and policies. Mr. Brock also summarizes the types of technical expenses that Bay Cities will incur to effectuate the channel change. And, Mr. Brock explains that several of the radio stations impacted by this proposal will have to carefully coordinate their facilities modifications in order for the overall counterproposal to be implemented properly.

4. One of the primary purposes of these Reply Comments is to advise the Commission that, should New Northwest's counterproposal be adopted, Bay Cities will require a detailed Cost Reimbursement Agreement to be executed by the parties, and anticipated cost expenses deposited into escrow, before any changes are made to the KDCQ-FM facilities. Although the Commission would require New Northwest to provide such cost reimbursements by citing to appropriate precedent/¹ in its final "Report and Order," Bay Cities is aware that parties in these situations often proceed to litigation for the full and fair reimbursement of their expenses. Although the Commission's prior rulings provide some guidance with regard to cost

¹ See, Circleville, Ohio, 8 FCC 2d 159 (1967); Harold A. Jahnke, 46 RR 2d 659 (1979).

reimbursement for broadcast equipment purchases and modifications, technical and legal fees, promotional expenses, printing expenses, new on-air jingle costs and other related expenses, parties in these exact situations have occasionally proceeded to litigation. Unless these cost reimbursement expenses are agreed to ahead of time, Bay Cities will oppose every application filed before the Commission to effectuate the New Northwest counterproposal and seek judicial intervention, if necessary.²

5. It should also be noted that the FM Band in the Coos Bay area is getting so congested that incidents of interference between radio stations is becoming a common problem. Should KDCQ-FM be ordered to change frequencies, it is only fair and reasonable for the Commission to require New Northwest to bear the expense of all measures needed to be taken by Bay Cities to operate interference-free on its new frequency. New Northwest is a competitor of Bay Cities in the Coos Bay area, and they should not be able to arrive at a competitive advantage by weakening the quality of the KDCQ-FM signal.

6. In light of the intricate nature of New Northwest's counterproposal, Bay Cities strongly encourages the Commission to include, as part of its final "Report and Order" in this proceeding, a requirement that all

² It should be pointed out that New Northwest recently approached KDCQ-FM seeking the consent of Bay Cities to the counterproposal that was ultimately submitted on July 29, 2002. At that time, New Northwest proposed a cost reimbursement amount that was terribly below the variety of cost reimbursement expenses that Bay Cities would incur should KDCQ-FM be ordered to change channels.

modification applications submitted to effectuate this counterproposal include a copy of the requisite, executed Cost Reimbursement Agreement. Were the Commission to require all the parties to agree to these details ahead of time -- and resolve their differences of opinion ahead of time -- the time and resources of the Commission could be greatly saved in the long run.

WHEREFORE, the above premises considered, Bay Cities respectfully requests the Commission carefully consider these Reply Comments should the Commission decide to accept New Northwest's counterproposal in this proceeding.

Respectfully submitted,

BAY CITIES BUILDING COMPANY, INC.

By: 

Cary S. Tepper

Its Attorney

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August 13, 2002

**Technical Statement
of
Graham Brock, Inc.**

REPLY COMMENTS
MB DOCKET #02-136
BAY CITIES BUILDING COMPANY, INC.
KDCQ RADIO STATION
COOS BAY, OREGON
August 2002

TECHNICAL STATEMENT

1. This technical statement and attached exhibits were prepared on behalf of Bay Cities Building Company, Inc. ("BCBC"), licensee of station KDCQ, Channel 228A, Coos Bay, Oregon. BCBC herein submits comments in response to a counterproposal filed by New Northwest Broadcasters, LLC ("NNB"), in MB Docket # 02-136. Among other requests NNB has asked the Commission to substitute Channel 225A for Channel 228A at Coos Bay and that KDCQ be ordered to change channels.

2. As shown on Exhibit #1, in order for Channel 225A to be allotted to Coos Bay, Oregon, it is necessary to substitute Channel 227C for Channel 226C at Springfield-Eugene, Oregon, and station KGNU be ordered to the new channel. Were this substitution to occur, Channel 225A at Coos Bay would meet the Commission's minimum distance separation requirements. However, it is noted that in order for KGNU to be relocated to Channel 227C at Springfield-Eugene, Oregon, KDCQ must vacate its current channel. As shown on Exhibit #2, on its current channel, KDCQ would violate §73.207 of the rules with respect to the proposed Channel 227C allotment at Springfield-Eugene, Oregon.¹ Due to the age of the KDCQ transmission system, it is likely that the antenna system and transmitter will have to be replaced to implement the change. As such, BCBC will seek reimbursement for these items from NNB.

¹If the Commission adopts the NNB proposal, it will be necessary for the licensee of KDCQ and KGNU to coordinate the changes in channel, since neither can implement the channel changes until the other station does.

3. The foregoing was prepared on behalf of Bay Cities Building Company, Inc., by Graham Brock, Inc., its Technical Consultants. All information regarding FM facilities was extracted from the CDBS database.² We assume no liability for errors or omissions in that database which may be adverse to the matters discussed above.

²The data relevant to the counterproposal was manually added to our in-house database for evaluation.

Graham Brock, Inc. - Broadcast Technical Consultants
 St. Simons Island, GA - Washington, DC
 Clearance study on Channel 225A for KDCQ Coos Bay Oregon
 Using present site as reference

REFERENCE

43 21 15 N
 124 14 34 W

CLASS - A

Current Spacings

DISPLAY DATES

DATA 08-10-02

SEARCH 08-13-02

----- Channel 225 - 92.9 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
AD225	ADD 225A	Coos Bay	OR	0.00	0.0	115.0	-115.00
KKNU	LIC 226C	Springfield-eugene	OR	116.08	51.3	165.0	-48.92
KDCQ	LIC 228A	Coos Bay	OR	0.00	0.0	31.0	-31.00
AD227	ADD 227C	Springfield	OR	116.08	51.3	95.0	21.08
KGBR	LIC 224A	Gold Beach	OR	106.77	185.3	72.0	34.77
ALLO	VAC 225A	Butte Falls	OR	160.28	123.0	115.0	45.28
KNCU	LIC 224C3	Newport	OR	156.54	5.6	89.0	67.54

EXHIBIT #1
 REPLY COMMENTS
 MB DOCKET #02-136
 BAY CITIES BLDG CO., INC.
 KDCQ RADIO STATION
 COOS BAY, OREGON
 August 2002

Graham Brock, Inc. - Broadcast Technical Consultants
 St. Simons Island, GA - Washington, DC
 Clearance study for KDCQ Coos Bay Oregon
 Using present site as reference

REFERENCE

43 21 15 N
 124 14 34 W

CLASS - A
 Current Spacings

DISPLAY DATES

DATA 08-10-02
 SEARCH 08-13-02

----- Channel 228 - 93.5 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
KDCQ	LIC 228A	Coos Bay	OR	0.00	0.0	115.0	-115.00
AD227	ADD 227C	Springfield	OR	116.08	51.3	165.0	-48.92
AD225	ADD 225A	Coos Bay	OR	0.00	0.0	31.0	-31.00
KOOZ	LIC 231C3	Myrtle Point	OR	43.98	183.2	42.0	1.98
KKNU	LIC 226C	Springfield-eugene	OR	116.08	51.3	95.0	21.08
KTMTEM	LIC 229C	Medford	OR	188.58	138.1	165.0	23.58
KKMX	LIC 282C2	Tri City	OR	81.86	118.2	15.0	66.86

EXHIBIT #2
 REPLY COMMENTS
 MB DOCKET #02-136
 BAY CITIES BLDG CO., INC.
 KDCQ RADIO STATION
 COOS BAY, OREGON
 August 2002

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

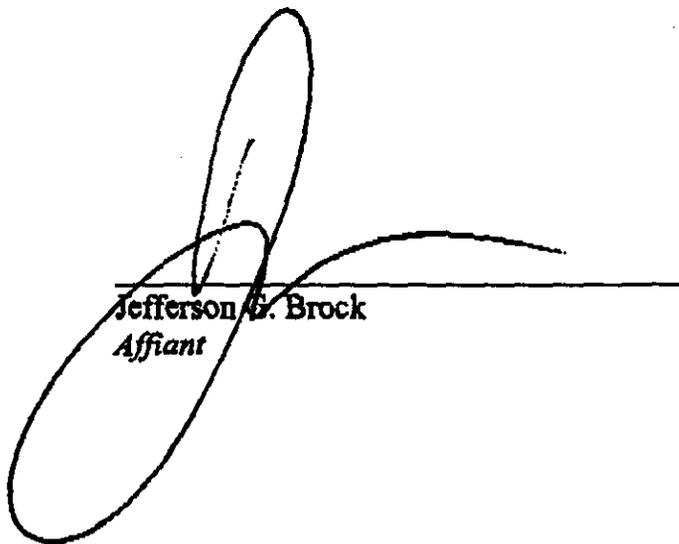
*State of Georgia)
St. Simons Island) ss:
County of Glynn)*

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Bay Cities Building Company, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

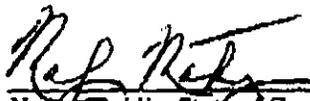
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 13th day of August 2002.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 13th day of August 2002.*



Notary Public, State of Georgia
My Commission Expires: April 16, 2006

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 13th day of August, 2002, I have served a copy of the foregoing "**Reply Comments of Bay Cities Building Company, Inc.**" via first class United States mail, postage prepaid, on the following:

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* / indicates delivery by hand