

separate "Motion for Leave to File". Since undersigned Counsel never received written service of these filings ^{1/} and they were not evident in the FCC data base, counsel for NPB had no way to know that a Motion for Leave to File had been submitted and, to the extent that it was, albeit only one copy for two separate proceedings, there is no further argument on that point.

Having said that, we also note that in our Motion to Strike (at footnote 1) we made a pointed reference to the fact that the prior pleadings of WBYC had been sent to an old, outdated address, and we made a specific request that WBYC take note of counsel's current address and send any future pleadings there. Notwithstanding this request and the fact that WBYC obviously read the Motion to Strike, presumably including footnote 1, it has continued to ignore that request and once again sent its Opposition pleading to the old address. We don't know how else to ask that WBYC do a proper service, and we do not know if there will be any further pleadings in this case, but if there are, and they continue to send them to what they know is an old address, we will not acknowledge that "service" for any purpose.

^{1/} Having now secured a copy of the Motion, counsel notes that each such pleading by WBYC was accompanied by a Certificate of Service showing they had been mailed to an old address of Counsel for NPB. Counsel does not question the representation of service but can only state here that neither was ever actually received although counsel's mail from his former address is regularly forwarded to his current address.

II. WBYC's Arguments Do Not Change its Basic, and Erroneous, Position That it Simply "Assumes" Publication of a Counterproposal That Does Not Include An Essential Part.

As to the pleadings themselves, having had a chance to review the original Motion for Leave to File as well as the Opposition the Motion to Strike, we do not believe that it is necessary to add a great deal to the argument already presented. The Motion for Leave as well as the other pleadings of WBYC take the consistent position that failing to include any commitment in the Counterproposal to apply for or build a new station upon the lower class channel being proposed as a "replacement" channel in Atlanta for the sole existing service that WBYC proposes to take from there, is a 'minor matter' which they could easily address after the Counterproposal is put on public notice. No harm, no foul.

We disagree and believe that the FCC has made it crystal clear that such a firm commitment is an essential part of any such counterproposal to the extent that "it would not even consider" such a proposal without such a commitment included. (Albion, Nebraska, and Llano, Texas, previously cited). Assuming that is so and the Commission meant what it has already said in at least two prior cases, then how can a counterproposal, such as WBYC's, be considered as "substantially complete" as required for all counterproposals at the time of filing (Cloverdale and Fort Bragg, previously cited).

In WBYC's Supplement it seemed to make light of that requirement, apparently indicating that it was its plan to simply

address that little item after the counterproposal had been published, simply sublimating past the rather important point that the counterproposal has no right or expectation to publication in the first place if it is not found to be prima facie "substantially complete".

Clearly, under WBYC's approach, the FCC must be left to wonder as to the counterproponent's intentions on a point that it says is ESSENTIAL for the counterproposal to be even considered. So if that point is omitted from the counterproposal as filed, what is the FCC to do? Ask for a "supplement" to be filed? Not likely when the rule is that counterproposals must be substantially complete as filed. Their other option would be to do the processing necessary on the counterproposal and "just take a chance" and "hope for the best" by putting the counterproposal out on publication, which is, we take it, WBYC's suggested approach. At that point the counterproponent might indeed offer a commitment as required. Or it might not. Is it the Commission's responsibility to expend its own time and resources to get to that point when they don't even know the answer to that essential question since it wasn't in the counterproposal as filed?

We don't think so, but WBYC sees no problem with that approach. As we noted in the Motion to Strike, such a procedure would seem to be contrary to the Commission's own prior findings as to what are essential elements and the necessity that such things be in the counterproposal as filed. To take the WBYC approach would seem to be patently wasteful and prejudicial to

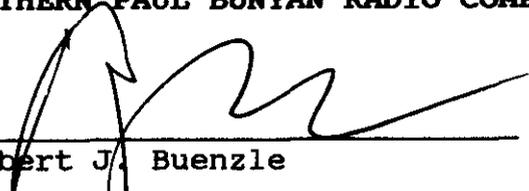
the orderly operation of the Commission's processes. It is the Commission's call to make but we think that the prior case holdings, as well as recognition of difficult considerations of precedent that would result from a contrary finding, mandate denial of the Supplement and dismissal of the counterproposal.

III. Conclusion

Wherefore, NPB respectfully submits that the Motion to Strike should be granted and the WBYC counterproposal dismissed.

Respectfully Submitted,

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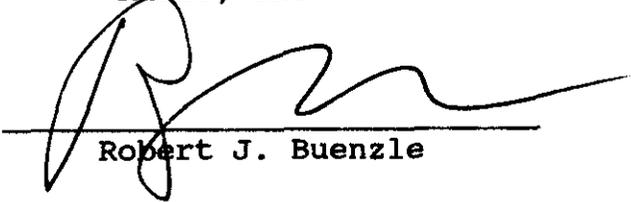
CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply To Opposition To Motion to Strike have been served by United States mail, postage prepaid this 29th day of August, 2002, upon the following:

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