

ORIGINAL

A. BAVENDER*
HARRY F. COLE*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELOMAN
FRANK R. JAZZO
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
SUSAN A. MARSHALL
HARRY C. MARTIN
LEE G. PETRO*
RAYMOND J. QUIANZON
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS
*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.
ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ARLINGTON, VIRGINIA 22209-3801
OFFICE (703) 812-0400
FAX: (703) 812-0486
www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U.S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
DONALD J. EVANS
D. S. O'NEILL*
WRITER'S DIRECT

DOCKET FILE COPY ORIGINAL

(703) 812-0453
petro@fhhlaw.com

November 5, 2002

RECEIVED

NOV - 5 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BJ HAND DELIVERY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

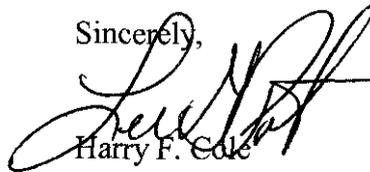
Re: Reply Comments of Elgin FM Limited Partnership
MB Docket 02-248, RM-10537

Dear Ms. Dortch:

Transmitted herewith, on behalf of Elgin FM Limited Partnership, is an original and four (4) copies of its Reply Comments in the above-referenced proceeding.

Should there be any questions regarding this filing, please contact undersigned counsel.

Sincerely,



Harry F. Cole
Lee G. Petro

Enclosures

cc: As shown on the Certificate of Service

No. of Copies rec'd 044
List ABCDE

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

RECEIVED

NOV - 5 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of: }
 }
Amendment of 73.202(b) }
Table of Allotments }
FM Broadcast Stations }
(Smiley, Texas) }

**MB Docket No. 02-248
RM-10537**

**TO: Chief, Audio Division
MEDIA BUREAU**

**REPLY COMMENTS OF
ELGIN FM LIMITED PARTNERSHIP**

Elgin FM Limited Partnership (“Elgin”), by and through its attorneys, hereby submits the foregoing Reply Comments regarding the Notice of Proposed Rulemaking to allot Channel 280A at Smiley, Texas.’

On October 21, 2002, a Counterproposal was filed by New Ulm Broadcasting Company (“New Ulm”) that proposed, *inter alia*, to allot Channel 223 at Schulenburg, Texas, and modify the license of Station KNRG(FM), New Ulm, Texas to operate on Channel 223 as a C3 facility.²

Elgin is the licensee of Station KKL B(FM), Elgin, Texas, which operates on Channel 223 (Facility ID. 19223). Elgin filed an application for a construction permit on October 18, 2002 which proposed, *inter alia*, a change in transmitter site and the utilization of a directional antenna (BPH-20021018AAX) (the “CP Application”). The CP Application was submitted in connection with an application filed by Station KBEY(FM), Bumett, Texas (BPH-20020829ACI), with

¹ *Notice of Proposed Rulemaking, DA 02-2061* (rel. Aug. 30, 2002) (“NPRM”). The NPRM established October 21, 2002 as the deadline for filing comments in the instant proceeding, and November 5, 2002 as the deadline for reply comments.

² As noted in the attached Engineering Exhibit of Mullaney Engineering, Inc., attached hereto as Exhibit One (the “Engineering Exhibit”), the engineering portion of the Counterproposal specified operation on Channel 222 at Schulenburg, Texas, whereas the narrative portion of the Counterproposal proposed operation on Channel 223 at Schulenburg. As discussed herein, both allotments are short-spaced to Elgin’s CP Application.

whom Elgin has entered into a mutual interference agreement. The CP Application does not conflict with the allotment of Channel 280A at Smiley, and therefore was protected from conflicting applications at the close of business, October 18,2002.

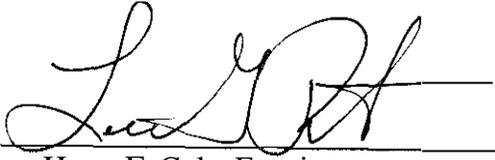
However, New Ulm's counterproposal does conflict with the pending (and protected) CP Application, and must be dismissed. Section 73.208(a)(3) of the Commission's rules provides guidance on this matter. Specifically, the Commission requires that all petitions to amend the FM Table of Allotments must meet the Commission's spacing regulations as set forth in Section 73.207. *Id.* In the context of the instant proceeding, therefore, New Ulm's Counterproposal needed to be filed on or before October 18, 2002 to meet the applicable spacing requirements with respect to Station KKLB(FM).

As discussed in the Engineering Exhibit, however, the allotment of either Channel 223C3 or Channel 222C3 at Schulenburg, Texas, *see supra note 1*, is short-spaced to the transmitter site specified in the CP Application. Specifically, if New Ulm seeks to allot Channel 222C3 at Schulenburg, the site would be 4.1 kilometers short-spaced to the CP application, and if New Ulm seeks to allot Channel 223C3, the short-spacing would be 57 kilometers to the CP Application.

Therefore, the counterproposal must be dismissed. Elgin's application was fully-spaced to the proposed allotment of Channel 280A at Smiley, Texas, and therefore was entitled to protection on the date that it was filed. While New Ulm may be able to amend its Counterproposal, it must take into consideration, and specify a site, that is fully-spaced to the site specified in the CP Application.

Respectfully Submitted,

ELGIN FM LIMITED PARTNERSHIP

By: 
Harry F. Cole, Esquire
Lee G. Petro, Esquire
Its Counsel

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

November 5, 2002

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20077

ENGINEERING EXHIBIT EE-REPLY:

**REPLY COMMENTS IN OPPOSITION
TO COUNTERPROPOSAL IN
MB DOCKET 02-248 - SMILEY, TEXAS**

NOVEMBER 5, 2002

ENGINEERING STATEMENT IN SUPPORT OF
AN OPPOSITION TO COUNTERPROPOSAL
FILED BY NEW ULM BROADCASTING COMPANY

Prepared on behalf of
Elgin FM Limited Partnership, LLC
Licensee of KKLK at Elgin, Texas

ENGINEERING EXHIBIT EE-REPLY:

**REPLY COMMENTS IN OPPOSITION
TO COUNTERPROPOSAL IN
MB DOCKET 02-248 - SMILEY, TEXAS**

NARRATIVE STATEMENT:

I. General:

This engineering statement has been prepared on behalf of Elgin FM Limited Partnership, licensee of KKLB (FM) at Elgin, Texas. The purpose of this statement is to support reply comments in opposition to a counterproposal filed by New Ulm Broadcasting in MB Docket 02-248 - Smiley, Texas. Elgin wishes to call the Staff's attention to the fact that as part of its counterproposal New Ulm has proposed the allotment of Channel 222C3 at Schulenburg, TX, from a site that will create for the first time a short spacing with a **previously filed & protected** change of site application by KKLB.

II. Engineering Discussion:

A. Proposed Location:

On October 21, 2002, New Ulm Broadcasting, licensee of KNRG at New Ulm, TX, has proposed in MB Docket 02-248 the deletion of 222A at New Elm and the allotment of 222C3 at Schulenburg, TX, and the modification of its license to specify that facility. Its counterproposal contains the following geographic coordinates (NAD-27) for 222C3:

Latitude: 29" 40' 05"
Longitude: 96" 47' 49"

On October 18, 2002 (3 days prior to KNRG filing), KKLB electronically filed a change of site application (FCC form 301, BPH-2002-1018AAX) and that application specified the following geographic coordinates (NAD-27) on 223A:

Latitude: 30" 13' 07"
Longitude: 97" 24' 03"

The distance between these two sites is 84.4 km where as Section 73.207 of the FCC rules specifies a minimum separation of 88.5 km for first adjacent channel A/C3 facilities. Thus, the counterproposal would create for the first time a **short spacing of 4.1 km** in contravention of the rules.

The counterproposal submitted by New Ulm contained what appears to be numerous typographical errors. These typos were not corrected by the "errata" filed by New Ulm on 10/23/2002. The summary of allotments contained in the legal as well as in the engineering appears to propose the allotment of 223C3 to Schulenburg, TX. However, the engineering narrative as well as the channel study (Exhibit E-1) appear to propose allotment of 222C3.

Should the deciphering of their proposal prove incorrect (maybe they really want 223C3) then Elgin **opposes even stronger** New Ulm's counterproposal since it would result in a **57 km** short spacing to KKLB's pending application and a **53 km** short spacing to KKLB's licensed site.

III. SUMMARY:

Elgin FM Limited Partnership, licensee of KKLB on 223A at Elgin, TX, herein submits reply comments in opposition to a counterproposal filed by New Ulm Broadcasting in MB Docket 02-248 - Smiley, Texas. Elgin wishes to call the Staff's attention to the fact that as part of its counterproposal New Ulm has proposed the allotment of Channel 222C3 at Schulenburg, TX, from a site that will create for the first time a short spacing with a **previously filed & protected** change of site application by KKLB

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

/s/ John J. Mullaney
John J. Mullaney, Consulting Engineer

November 5, 2002

CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, a secretary in the law ~~firm~~ of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the Reply Comments of Elgin FM Limited Partnership was sent this 5th day of November, 2002, by first class U.S. Mail, postage prepaid, to the following:

R. Barthen Gorman*
Federal Communications Commission
Media Bureau - Audio Services Division
445 12th Street, S.W., Room 3-A224
Washington, D.C. 20554

Linda Crawford
3500 Maple Avenue, #1320
Dallas, TX 75219

Gene A. Bechtel
Law Offices of Gene A. Bechtel
1050 17th Street, Suite 600
Washington, DC 20036
Counsel for Linda Crawford

Robert J. Buenzle
Law Offices of Robert J. Buenzle
11710 Plaza America Drive, Suite 2000
Reston, Virginia 20190


Suzanne E. Thompson

* - Hand Delivery