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December 4, 2002

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

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DEC - 4 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Opposition to Petition for Reconsideration
MM Docket No. 01-62
KEA Radio, Inc. - FRN:0005-0954-84

Dear Ms. Dortch:

Transmitted herewith, on behalf of KEA Radio, Inc., is an original and four copies of an "Opposition" to the Petition for Reconsideration filed by STG Media, LLC and Pulaski Broadcasting, Inc. in the above-referenced proceeding.

Should any questions arise concerning this filing, please contact undersigned counsel.

Sincerely,

Frank R. Jazzo
Lee G. Petro

Counsel for KEA Radio, Inc.

Enclosures
cc As shown on the Certificate of Service

014

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DEC - 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-62
Table of Allotments,	)	RM-10053
FM Broadcast Stations.	)	RM-10109
(Ardmore, Brilliant, Brookwood, Gadsden,	)	RM-10110
Hoover, Moundville, New Hnpe, Pleasant	)	RM-10111
Grove, Russellville, Scottshnro, Troy,	)	RM-10112
Tuscaloosa and Winfield, Alabama;	)	RM-10113
Okolona and Vardaman, Mississippi;		RM-10114
Linden, McMinnville, Pulaski		RM-10116
and Walden, Tennessee)	)	

TO: CHIEF, AUDIO DIVISION
MEDIA BUREAU

OPPOSITION TO
PETITION FOR RECONSIDERATION

KEA Radio, Inc. ("KEA Radio"), by and through its attorneys, and pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f) (2001), hereby submits the following Opposition to the "Petition for Reconsideration" filed by STC Media, LLC ("STG Media") and Pulaski Broadcasting, Inc. ("Pulaski") (collectively, the "Petitioners") in the above-referenced proceeding (the "Pctition").[1] The Petitioncrs now object to the allotment of Channel 278A at New Hope, Alabama, and instead seek to change the channel of operation of Station WKEA-FM, Scottsboro, Alabama, to Channcl 278A, to facilitate the upgrade and channel change of Station WKSR-FM, Pulaski, Tennessee, to operate on Channel 252C1 at Ardmore, Alabama

[1] The Pztirioners filed their Petition on October 15, 2002, with respect to the *Report and Order* in this proceeding. 17 FCC Rcd 16332 (2002) (the "Order"). Pursuant to the Commission's rules, any opposition to the Petirion is due within 15 days of public notice of the Petition Section 1.4(b)(1) of the Commission's rules defines "public notice" in this context as the publication of a notice of the Petition in the Federal Register. Such notice was published on November 19, 2002. As such, the instant Opposition is timely filed.

KEA Radio is the licensee of Station WKEA-FM, and objects to the proposed change of the station's channel allotment. Specifically, the Petitioners have failed to establish a reasonable basis for the extraordinary actions requested therein. Moreover, the proposed change of WKEA-FM's channel contained in the Petition is defective and does not comply with the Comniission's rules. While Channel 278A is fully-spaced in accordance with Section 73.207 of the Commission's rules at WKEA-FM's currently licensed transmitter site, it is more than 11 kilometers short-spaced to the Channcl 279C3 allotment at Walden, Tennessee, from the transmitter site authorized for WKEA-FM in construction permit BPH-20010123ABH. Therefore, the proposed WKEA-FM channel change can only be made with KEA Radio's consent. Since Petitioners have no agreement with KEA Radio for such consent, the Petition for Reconsideration must bc dismissed or denied.

I. BACKGROUND

In adopting the Order, the Commission modified the licenses of eight existing broadcast facilities, and allotted first local services to three other communities. STG Media filed a countci-proposal in the proceeding, and sought the allotment of Channel 278A at New Hope, which conflicted with the original Petition for Rulemaking's proposed allotment of Channel 27XA at Scottsboro.' The allotment of Channel 278A at Scottsboro and resulting modification of WKEA-FM's license at Scottsboro, would have permitted the allotment of Channel 252C1 at Ai-dinore, and the resulting relocation and upgrade of Station WKSR-FM at Ardmore. It should be noted that KEA Radio had consented to the proposed WKEA-FM channel change, pursuant to an agreement it had reached with the rulemaking's proponents. Thus, by filing its

Comments and Counterproposal of STG Media. LLC, Docket 01-62 (filed April 24, 2001)(the "*Counterproposal*").

counterproposal, STG Media sought to block the allotment of Channel 252C1 at Ardmore, the very action it now asks the Commission to make in its Petition for Reconsidel-ation.

In its Counterproposal, STG Media ai-gued that New Hope was a community for allotment purposes, and the proposed allotment of Channel 278A there would result in a preferential arrangement of allotments and would hetter serve the public interest compared to substituting Channel 27XA at Scottsboro. In addition, STG Media provided the following statement:

> STG Media hereby states that upon adoption of a Report and Order modifying the FM Table of Allotments and the opening of a new auction proceeding for the allotment to New Hope, STG Media will promptly file and participate in the auction for the new station.

Counterproposal, pg. 3. STG Media's Counterproposal clearly sought to prevent WKSR-FM from moving to Ardmore and the resultant upgrade from a Class A to a Class C1 facility.

This effort was successful. The Commission accepted STG Media's verified expression of interest, and granted the proposal to allot Channel 278A at New Hope, Alabama, and did not grant the proposed substitution of Channel 27XA for Channel 252A at Scottsboro, and did not grant the proposed relocation and upgrade of Station WKSR-FM from a Class A to a Class C1 facility at Ardmore.

In the wake of this success, STG apparently then struck a deal to buy Station WKSR-FM, hut conditioned the deal on (1) the successful re-opening *of* the instant proceeding; (2) the successful rescission of its affirmative expression of interest in New Hope; (3) the deletion of the allotment at New Hope that it had just fought so hard to obtain; (4) the deletion of the Channel 252A allotment at Pulaski, the reallotment of Channel 252C1 at Ardmore, and the modification of WKSR-FM's license to specify operation on Channel 252C1 and (4) the substitution of Channel 278A for Channel 252A at Scottsboro, and the modification of WKEA-FM's license to

specify operation on Channel 278A. As such, the Petitioners filed their Petition, and STG Media renounced its interest in the New Hope allotment, and the Petitioners seek "approval" of their Option Agreement so as to permit STC Media to now acquire Station WKSR-FM. STG Media's transparent manipulation of the Commission's rulemaking processes for its own private gain must not he allowed to stand.

II. DISCUSSION

A. The Petition Fails to Establish Sufficient Grounds fur Reconsideration.

Section 1.429 establishes specific reasons for which a party may **seek** reconsideration of a Coinmission rulemaking decision. Specifically, a party may only seek reconsideration of a Commission decision if one of three showings have been made to the Commission.'

The Petitioners rest their Petition on the fact that, subsequent to the adoption of the Order, STG Media determined that it no longer supports the allotment of Channel 278A at New Hope. The Petitioners also make a veiled reference to "public-interest" benefits that would result from the grant of the Petition. The Petitioners, however, fail to describe any actual changed circumstances with respect to the once "preferred" New Hope allotment. The Pctitioners have plainly failed to meet their burden under Section 1.429.

It is likely, though, that the only portion of the public benefiting from the grant of the Petition would be the Petitioners. In fact. it is obvious that the Petitioners seek to hoot-strap a private negotiation conducted after the adoption of the Order, and classify it as a petition for

---

Section 1.429 of the Commission's rules provides:
(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;
(2) The facts relied on were unknown to petitioner until after his last opportunity *to* present them to the Commission, and hc could not through the exercise of ordinary diligence have learned of the facts in question prior to **such** opportunity; or
(3) The Coinmission determines that consideration of the facts relied on is required in the public interest.

reconsideration of the instant procceding. However, it would be an abuse of the Commission's processes to permit a party to propose an allotment to block the upgrade of another station, and then once its proposal is accepted, to make a private deal to acquire the station, *so* long as the party could renounce its prior pledge to the Coinmission and undo its actions in a formal rulemaking proceeding and havc the once-blocked reallotment and upgrade approved.

The only case cited by the Petitioners in support of this outlandish abuse of the Commission's rules is ***Mount Pleasant and Bogata, Texas***, 16 FCC Rcd 7858 (Alloc. Branch 2001). However, there were only two mutually consenting parties involved in that proceeding, and only one mutually exclusive allotment, as compared to the allotment of 11 FM channels and the participation of more than ten other licensees, as is the case in the instant proceeding. Moreover, the settlement reached in *Mount Pleasant* and approved by the Commission contemplated the payment of only the legitimate and prudent expenses of the withdrawing party, rather than the payment of $2.25 million dollars (hat STG Media would pay Pulaski under the Option Agreement. The failure to ohtain **KEA** Radio's consent here is a key distinguishing factor in the instant proceeding.

As such. the Petitioners have failed to substantiate their claim that the Petition should be granted due to "changed circumstances," nor have they pointed to any "public-interest benefits" derived from the grant of the Petition. Therefore. the Petition could be dismissed solely on these grounds,

B. <u>The Proposed Reallotment of Channel 252C1 to Ardmore, and the Forced Reallotment of WKEA-FM's Channel of Operation Fail To Comply with The Cornmission's Rules</u>.

However, even if the Commission accepted the Petitioners' justification for filing the Petition, the proposal must fail. In order for the Pctition to be granted, WKEA-FM must be moved from Channcl 252A to Channel 278A.

In proposing such a reallotment, however, the proponent must demonstrate the proposed new channel is fully-spaced pursuant to Section 73.207 of the Commission's rules from the station's authorized transmitter sites, as set forth in Section 73.208(a)(1)(i) of the Commission's rules. In the instant matter, Station WKEA-FM has two authorized tower sites, one lor its licensed operation (BMLH-19891207KF), and one for its construction permit authorization (BPH-20010123ABH). Thus, in proposing to move Station WKEA-FM to Channel 278A, Petitioncrs must ensure that both the license ***and*** the construction permit authorization sites are fully-spaced.[4]

However, as shown in the attached Engineering Spacing Study, atrached hereto as Exhibit **A,** the proposed allotment of Channel 278A at WKEA-FM's site authorized in its construction permit is short-spaced to the allotment of Channel 279C3 at Walden, Tennessee, which was adopted in the Order. Specifically, the Walden allotment is 11.25 kilometers short-spaced to the authorized site in WKEA-FM's construction permit. Therefore, the Commission can not grant the Petition without **KEA** Radio's consent, as it would result in a short-spaced allotment vis-&vis Channcl 278A at Scottsboro and Channel 279C3 at Walden, Tennessee.

III. CONCLUSION

On the basis of the arguments presented herein, KEA Radio requests that rhe Commission dismiss or deny the Petition for Reconsideration filed by STG Media and Pulaski. The Petitioners are attempting to boot-strap their privately negotiated agreement to undo a rulemaking in which cach Petitioner was an active participant. It is not clear when *STG* Media changed its mind and determined that it is no longer interested in an allotment at New Hope.

---

[4] *See Cut and Shoot, Texas*, 11 FCC Rcd 16383(1996)("both the licensed site and the construction permit site represent authorized sites [under 73.208(a)(1)(i)] and a rulemaking proponent must meet the separation requirements for both sites.").

However, the Commission should not countenance STG Media's abuse of its processes. STG Media should not be permitted to block the reallotment of Station WKSR-FM unless such reallotment is made on terms it finds acceptable. The proposed WKEA-FM channel change can only he made if KEA Radio's consent has been obtained to address the short-spacing of Channel 278A at rhc WKEA-FM construction permit site.

The Commission reviewed the public interest benefits of an allotment at New Hope, Ardmore, and Scottsboro, and determined that the allotment should he made at New Hope, and the Comniission should reject efforts by STG Media to the contrary, which are not in compliance with the Commission's rules and policies.

Respectfully Submitted,

KEA RADIO, INC.

By: Frank R. Jazzo

Frank R. Jazzo
Lee G. Petro

Its Attorneys

Fletcher, Heald & Hildreth PLC
1300 North 17th Street
11th Floor
Arlington, Virginia 22209

Decemhcr 4, 2002

EXHIBIT A

Engineering Spacing Study

The attached spacing study **was** produced utilizing the transmitter site authorized in Station WKEA-FM's construction permit (BPH-20010123ABH), in conjunction with the proposal to substitute Channel 278A for Channel 252A at Scottsboro, Alabama.

The attached spacing study demonstrates that the allotment of Channel **278A** at Scottsboro, Alabama, operating from Station WKEA's authorized site, would be 11.25 kilometers short-spaced to the allotment of Channel 279C3 at Walden, Tennessee.

1hereby declare under penalty ofpejury that the foregoing **is** true and correct.

SISK ENGINEERING, INC.

By: Olvie E. Sisk

Olvie E. Sisk
Its President

Executed on November 22, 2002

REFERENCE
34 41 35 N
85 54 01 W

CLASS = A
□□□□□□□□□Spacings
Channel 278 - 103.5 MHz

DISPLAY DATES
DATA 10-24-02
SEARCH 10-24-02

Call	Channel	Location		Dist	Azi	FCC	Margin
RADD	ADD 278A	New Hope	AL	49.38	255.4	115.0	-65.62
RADD	ADD 279C3	Walden	TN	77.75	38.1	89.0	-11.25
AP276	APP 276L1	Ider	AL	20.28	82.3	29.0	-8.72
WKDF	LIC 277C	Nashvi11e	TN	172.10	330.3	165.0	7.10
AP280	APP 280L1	Bryant	AL	36.37	38.4	29.0	7.37
WVEE	AUX 277C	Atlanta	GA	173.51	126.3	165.0	8.57
RADD	ADD 277C0	Atlanta	GA	177.59	125.4	165.0	12.59
WVEE	LIC 277C	Atlanta	GA	177.59	125.4	165.0	12.59
RDEL	DEL 277C	Atlanta	GA	177.59	125.4	165.0	12.59
AP279	APP 279L1	Boynton	GA	71.14	71.6	56.0	15.14
WKDF	AUX 277C	Nashville	TN	180.59	334.4	165.0	15.59
AP279	APP 279L1	Tunnel Hill	GA	80.05	74.4	56.0	24.OS
WIMZFM	LIC 278C	Knoxvi1le	TN	254.24	50.3	226.0	28.24
RADD	ADD 279C1	Trussville	AL	165.45	213.3	133.0	32.45
AP225	APP 225L1	Trenton	GA	47.60	61.1	7.0	40.60
RADD	ADD 278A	Russellville	AL	163.50	266.7	115.0	48.50
WAFNFM	LIC 224A	Arab	AL	62.45	232.6	10.0	52.45
WAFNFM	CP 224A	Arab	AL	62.47	232.6	10.0	52.47
WAFNFM	APP 224A	Arab	AL	62.47	232.6	10.0	52.47
WAFNFM	APP 224A	Arab	AL	62.47	232.6	10.0	52.41
WKXX	LIC 275A	Attalla	AL	84.55	199.5	3i.0	53.55
AP225	APP 225L1	Chattanooga	TN	66.65	53.8	7.0	59.65
AP280	APP 280L1	Calhoun	GA	89.87	103.5	29.0	60.87
WLOJ-L	CP 275L1	Calhoun	GA	92.28	102.1	29.0	63.28
WBUZ	LIC 275C1	Shelbyville	TN	139.27	332.2	75.0	64.27
RADD	ADD 275C1	La Vergne	TN	139.27	332.2	75.0	64.27
WBUZ	LIC 275C1	Shelbyville	TN	139.27	332.2	75.0	64.27
RDEL	DEL 275C1	Shelbyville	TN	139.27	332.2	75.0	64.27
WBUZ.C	CP 275C1	Shelbyville	TN	139.27	332.2	75.0	64.27
WEUPFM	LIC 276C3	Moulton	AL	113.78	256.7	42.3	71.78

CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, of the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that on this the 4th day of December, 2002, I caused copies of the foregoing "Opposition" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

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