

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 02-335
Table of Allotments	)	RM-10545
FM Broadcast Stations	)	
(Hart, Pentwater, and	)	
Coopersville, Michigan)	)	

To: Assistant Chief, Audio Division

**REPLY COMMENTS OF NORTHERN RADIO OF MICHIGAN, INC.**

Northern Radio of Michigan, Inc., licensee of Stations WKLT(FM), Kalkaska, and WKVK(FM), Honor. Michigan, hereby files its reply to the Counterproposal (the "Counterproposal") of Fort Bend Broadcasting Company ("Fort Bend") filed on December 30, 2002

Through a series of changes to the Table of Allotments, Fort Bend seeks to relocate Station WBNZ(FM) from Frankfort to Garfield Township, Michigan, and to upgrade the station's class from 257C2 to 257C1. However, the Counterproposal should be rejected because on the December 30 comment deadline, a crucial element of the proposal was contingent upon action in another pending rulemaking proceeding.

As shown in the Counterproposal, the allotment of Channel 257C1 to Garfield Township is dependent on Fort Bend's proposal to substitute Channel 249C2 for Channel 257C2 for Station WATZ, Alpena, Michigan. The substitution at Alpena is, in turn, dependent on the substitution of Channel 246A for Station WMRX's currently licensed Channel 249A at Beaverton, Michigan. The Beaverton substitution is, in turn, dependent upon acceptance of Fort Bend's proposal to substitute Channel 295A for Channel 245A, used by Station WPCM, Standish, Michigan. However, as shown

below, Channel 295A was not available at Standish as of the December 30 deadline for counterproposals in this proceeding.

Fort Bend's Exhibit E-5 addresses the Standish allocation. The fourth line of the allocation study reports a 5.3 kilometer short spacing to a pending allocation proposal for Channel 297C3 at Ubyly, Michigan, and includes a footnote 22 that attributes the Ubyly entry to a "database error." But the only database error is in the name of the proposed community. As shown in the attached engineering statement of Carl T. Jones Corporation, the coordinates listed for Ubyly in CDBS actually are the coordinates for Channel 297C3 proposed for Cass City, Michigan in a counterproposal timely filed by Edward Czelada ("Czelada") in MM Docket No. 01-33. The Czelada counterproposal, which also proposed a channel assignment at Ubyly, was not considered in *Cass City and Caro, Michigan (Report and Order)*, 16 FCC Rcd 9461 (2001) in MM Docket No. 01-33 because, the Commission said, the coordinates proposed for Channel 297C3 at Cass City failed to comply with city-grade coverage and spacing requirements. See *Cass City and Caro, Michigan (Erratum)*, \_\_\_FCC Rcd\_\_\_ (fn. 1) (released May 11, 2001). However, Czelada filed a timely petition for reconsideration on June 11, 2001, and that petition was pending as of the December 30, 2002 deadline for counterproposals in this proceeding.

Fort Bend's Channel 295A allocation at Standish did not protect the proposed Cass City Channel 297C3 coordinates as of the date Fort Bend filed its Counterproposal. See *Engineering Statement*. Those coordinates reflected a timely filed petition that had not been acted upon as of December 30, 2002. The fact the Counterproposal did not protect the Cass City coordinates (and instead characterized the Cass City coordinates as a "database error"), renders the entire Counterproposal defective because, as shown, the Standish Channel 295A substitution is an integral

integral part of the overall proposal. It is the Commission's policy not to accept rulemaking proposals that are contingent upon final action in another rulemaking proceeding. *Auburn, Northport, Tuscaloosa, et al, Alabama*, 17 FCC Rcd 16227,16229 (2002) (*recon. pending*); *Esperanza, Puerto Rico, Christiansted, Virgin Islands*, 11 FCC Rcd 2908, 2908-09 (1996). The reason for this policy, as explained in *Auburn*, is,

...processing contingent proposals is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the staff. The staff would either have to wait until the contingency is met, thereby further delaying action in a case, or would have to revisit a decision if a proposal was granted contingent on the outcome of an action that never occurred. In either case, the staff's attempts at processing cases and achieving finality is frustrated.

*Auburn, supra* (footnote omitted). This policy applies to the Counterproposal, which, when filed, was in conflict with Czelada's petition for reconsideration.

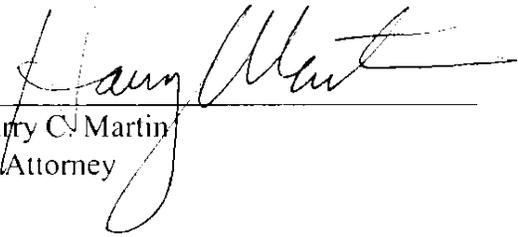
The merits of Czelada's petition for reconsideration are not important. If the Commission were to consider the merits of the pending petition here, it would have to do so in every case involving an undecided petition for reconsideration. Moreover, the Commission would be put into the position of having to determine the merits of pending petitions without formally deciding them, and without knowing when such determinations would, if ever, become final. This would involve the very type of *post hoc* and contingent processing the policy discussed above was intended to bar.

For the reasons stated above, Fort Bend's Counterproposal was technically defective under Section 73.207 of the rules as the December 30, 2002 deadline for such petitions. For this reason the Counterproposal should be dismissed. *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090, 2093 (1997) (counterproposals must be technically correct and substantially complete at the time they are filed); *accord, Fort Bragg, California*, 6 FCC Rcd 5817 (1991).

**WHEREFORE**, These matters considered, it is respectfully requested that Fort Bend's Counterproposal be **DISMISSED**.

Respectfully submitted,

**NORTHERN RADIO OF MICHIGAN, INC.**

By  \_\_\_\_\_  
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January 15, 2003



STATEMENT **OF** WILLIAM J. GETZ  
IN SUPPORT **OF** REPLY COMMENTS IN  
OPPOSITION TO A COUNTERPROPOSAL  
IN MB DOCKET NO. **02-335**, RM-10545

Prepared for: Northern Radio of Michigan, Inc.

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, VA. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by the Northern Radio of Michigan, Inc., to prepare this statement in support of its Reply Comments in opposition to a counterproposal filed in the above-referenced MB Docket No. 02-335.

Waters Broadcasting Corporation and Synergy Media, Inc., ("Lead Petitioners") filed the original Petition to Amend the FM Table of Allotments, Section 73.202(b) of the FCC Rules proposing the reallocation of WCXT (Channel 287B) from Hart to Coopersville, Michigan. In addition, the Lead Petitioners also requested the reallocation of Channel 231C3 from Pentwater, Michigan, to Hart, Michigan, to maintain the community's sole local aural service. On October 23, 2002, the Allocations Branch adopted a Notice of Proposed Rulemaking ("NPRM") setting forth the Lead Petitioner's request to modify Section 73.202(b)

of the FCC Rules. The NPRM established a comment date of December 30, 2002, and a reply comment date of January 15, 2003.

On December 30, 2002, Fort Bend Broadcasting Company ("Fort Bend") filed a multichannelcounterproposal("Fort BendCounterproposal") to the Lead Petitioner's proposal to allot Channel 287B to Coopersville, Michigan. This material is prepared as reply comments in opposition to Fort Bend's proposed channel 295A at Standish, Michigan.

#### The Fort Bend Counterproposal

In part, the Fort Bend counterproposal requests an upgrade for WBNZ(FM), Frankfort, Michigan. In order for WBNZ, Frankfort, Michigan, to upgrade from Channel 257C2 to Channel 257C1, WATZ-FM, Alpena, Michigan, must vacate Channel 257C2. Fort Bend proposes Channel 249C2 for WATZ-FM, Alpena, MI. In order for WATZ-FM to change from Channel 257C2 to Channel 249C2, WMRX(FM), Beaverton, Michigan, must vacate Channel 249A. Fort Bend proposes Channel 246A for WMRX, Beaverton, MI. In order for WMRX to change from Channel 249A to Channel 246A, WWCM(FM), Standish, Michigan, must vacate Channel 245A. Fort Bend proposes Channel 295A for WWCM, Standish, MI.

#### Channel 295A, Standish, Michiaan

Fort Bend proposes Channel **295A** at Standish, Michigan, at the reference coordinates 44-01-46 N.L. and 83-57-44 W.L. (See Fort Bend Counterproposal, Engineering Statement, Page 5). The Standish, Michigan, Channel 295A allotment reference site is separated from

the reference coordinates for a proposed Channel 297C3 allotment by 36.73 kilometers. Pursuant to Section 73.207 of the FCC Rules, the minimum distance separation for second-adjacent channel related Class A-to-Class C3 allotments and assignments is 42.0 km. Therefore, Fort Bend's proposed allotment reference coordinates for Standish, Michigan, are 5.27 km short-spaced to the coordinates proposed for Channel 297C3. This short-spacing is addressed in Footnote 22 of Fort Bend's Engineering Exhibit E-5 which states, "This is a database error. The channel shown is in conflict with a prior filed proposal and was inadvertently placed in the database".

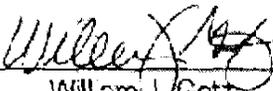
According to the FCC's consolidated database system (CDBS), an active rulemaking proceeding (MM Docket No. 01-33) advanced the proposal to add Channel 297C3 at Ubly, Michigan, at reference coordinates (43-42-00 N.L. and 83-55-30 W.L.). Fort Bend's proposed Channel 295A at Standish is 5.27 kilometers short-spaced to Channel 297C3 at these reference coordinates. Fort Bend is correct in its assertion that there is a database error. However, the database error is in the proposed community of license only (the proposal is for Cass City, Michigan, not Ubly, Michigan). The proposed channel (297C3) and proposed coordinates (43-42-00 N.L. and 83-55-30 W.L.) are correct in the CDBS. As a result, the 5.27 kilometer short-spacing between Fort Bend's proposed Channel 295A and the proposal to add Channel 297C3 to Cass City, Michigan, cannot simply be ignored. The proposed Channel 297C3 allotment reference coordinates must be protected until the time that MM Docket No. 01-33 is final. Therefore, Fort Bend's proposal to add Channel 295A to Standish, Michigan, is clearly dependant upon the final action in another rulemaking proceeding.

STATEMENT OF WILLIAM J. GETZ  
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As discussed above, absent a fully-spaced allotment reference site for Fort Bend's proposed Channel 295A at Standish, Michigan, the entire counterproposal fails.

This statement has been prepared by me or under my direct supervision and is believed to be true and correct

DATED: January 14, 2002

  
\_\_\_\_\_  
William J. Getz

**CERTIFICATE OF SERVICE**

I, Evelyn Ojea, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that I have on this 15<sup>th</sup> day of January, 2003, cause to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments of Northern Radio of Michigan, Inc." to the following:

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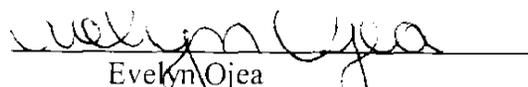
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