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January 16, 2003

**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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JAN 16 2003

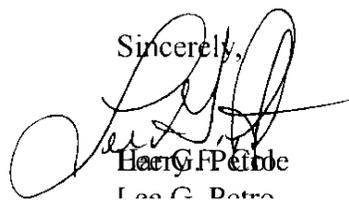
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Reply Comments  
MM Docket No. 99-322, RM-9762

Dear Ms. Dortch:

Transmitted herewith is an original and nine copies of the "Reply Comments" of Franklin Communications, Inc., North American Broadcasting Co. and WLCT Radio Incorporated in the above-referenced proceeding.

Should any questions arise concerning this application, please communicate with this office.

Sincerely,  
  
Lee G. Petro

Enclosures

cc: As shown on the Certificate of Service

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

JAN 16 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: }  
 }  
Amendment of Section 73.202(b), }  
Table of Allotments, }  
FM Broadcast Stations }  
 }  
(Chillicothe and Ashville, Ohio) \_\_\_\_\_ |

MM Docket No. 99-322  
RM-9762

TO: CHIEF, MEDIA BUREAU

REPLY COMMENTS

Franklin Communications, Inc., North American Broadcasting Co. and WLCT Radio Incorporated (the “*Joint Parties*”), by and through their attorneys, hereby submit these Reply Comments to the Opposition filed by Secret Communications II, L.L.C (“*Secret*”) on December 19, 2002 (the “*Opposition*”).<sup>1</sup> Secret opposes the Joint Parties’ “Petition for Reconsideration,” filed on December 6, 2002 (the “Petition”), of the *Report and Order* in the above-referenced proceeding, which **was** released on October 18, 2002. *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 20,418 (2002).

Through their submissions in this proceeding, the Joint Parties have provided clear evidence of Secret’s intention to move Station WFCB, currently licensed to Chillicothe, Ohio, into the Columbus, Ohio metro market through the reallocation of Channel 227B at Ashville, Ohio. This reallocation of the station from serving largely rural areas to serving the 36<sup>th</sup> ranked radio market requires an honest review by the Commission of the proponents’ claims of public interest benefits supposedly arising from such a move. Otherwise, the Commission must impose

<sup>1</sup> The Joint Parties filed a Request for Extension of Time on January 2, 2003, seeking authorization to submit this Reply by January 16, 2003. To date, no opposition to that request has been received.

conditions upon the grant of the construction permit authorization that would restrict Secret's *de facto* reallocation of Station WFCB.

## DISCUSSION

In their Petition, the Joint Parties argued that the Commission ignored its previous allotment decisions in which it required that the proponent of a reallocation proposal construct at specific transmitter site. Moreover, the Joint Parties noted that one important safety valve on which the Commission's staff rested its decision in the *Report and Order*, *i.e.*, that the Joint Parties could object to a subsequent minor change application filed by Secret, has been specifically repudiated by the Commission's staff.

Based on these material errors, the Joint Parties sought reconsideration of the *Report and Order*. In its *Opposition*, Secret did nothing to allay the alarm raised by the Joint Parties that Station WFCB would soon be a Columbus, Ohio metro radio station. Instead, it argued against a "blanket freeze condition" that would require Station WFCB to remain as an Ashville station, since it would "prevent the Commission from reviewing the facts of an individual case to determine whether relocation would serve the public interest." *Opposition*, pgs. 3, 4.

Despite Secret's protestations in its *Opposition*, the Joint Parties continue to believe that the Commission must place a special condition on the construction permit authorization in order to prohibit the further relocation of Station WFCB towards the Columbus, Ohio metro market. Moreover, Secret's attempts to distinguish the instant matter from the *Puna, Illinois* case cited in the Petition are unconvincing.<sup>2</sup> In both the instant matter, and in *Puna, Illinois*, an opposition to the further relocation of a recently-reallocated station was submitted to the Commission, The fact that the *Puna, Illinois* case did not involve the **Newnan** policy, as argued by Secret, is

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<sup>2</sup> *Letter to John Garzigliu, Esquire*, dated February 19, 2002, Station WEGY(FM), Pana, Illinois (BPH-20010731AAY), ("*Puna, Illinois*").

meaningless. *Opposition*, pg. 4, nt. 2. In both cases, the petitioner noted that the Commission's allotment procedures have been hijacked by a licensee intent upon moving a largely rural facility into a major metropolitan area. The Commission's staff has stated that an otherwise acceptable minor modification application will not be dismissed even though the minor modification reflects a whole-scale move-in of a new facility in a metropolitan area. In light of this ruling, it is clear that the Commission must confront *de facto* reallocation matters during the allotment stage to protect the public interest.

Moreover, since most FCC rules and regulations can be waived under the appropriate circumstances, there is no reason why the special condition requested by the Joint Parties can not be enforced. In the unlikely event that Secret, or its assigns, suddenly loses its transmitter site, the licensee could merely file a request for waiver under the Commission's rules,' and seek the review of "the facts of an individual case to determine whether relocation would serve the public interest." *Opposition*, pg. 3, 4.

Alternatively, the Commission could adopt a special condition requiring Secret, or its assigns, to affirmatively demonstrate, in any further site change application it might file, that any further modification of the facility is necessary prior to the grant of a new transmitter site. Such a condition would, in effect, create a rebuttable presumption against the relocation of the transmitter site into the Columbus, Ohio Urbanized Area. Such a presumption would be consistent with the public interest in slowing the migration of FM channels to highly populated -- but already well-served -- areas at the expense of less populated and less well-served area. Such a presumption would not absolutely preclude Secret (or its assigns) from re-locating in the event of some future exigency (e.g., involuntary loss of its present site), but it would force Secret, or its

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<sup>3</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C.Cir.1969), cert denied, 409 U.S. 1027 (1972)(Commission may waive its rules based on a showing of good cause). See 47 C.F.R. §1.3 (2001).

assigns, to demonstrate why the relocation was necessary, and it would provide third parties an opportunity to review, assay, comment on and, if warranted, challenge the application. This will not unduly burden Secret, and it will serve to protect the public's interest in maintaining an appropriate allocation of channels.

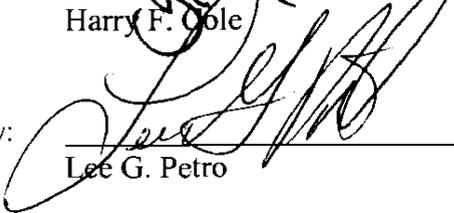
### CONCLUSION

It is clear from the record in this proceeding, and previous such attempts, that Station WFCB will become a Columbus, Ohio radio station if the Commission does not impose the relief requested herein. Not only would the public lose, but the Commission's allotment processes would be abused as well.

Therefore, Franklin Communications, Inc., North American Broadcasting Co. and WLCT Radio Incorporated respectfully request that the Commission grant the Petition for Reconsideration and set aside the reallocation of Channel 227B from Chillicothe to Ashville, Ohio or, at a minimum, that that reallocation be subject to a condition as set forth above.

Respectfully submitted

By:   
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By:   
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January 16, 2003

**CERTIFICATE OF SERVICE**

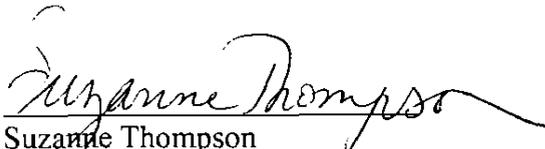
I, Suzanne Thompson, a secretary at the law ~~firm~~ of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that I have this 16<sup>th</sup> day of January, 2003, mailed by first-class United States mail, postage prepaid, a true copy of the foregoing "Reply" to the following:

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