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January 15, 2003 **FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

VIA HAND DELIVERY

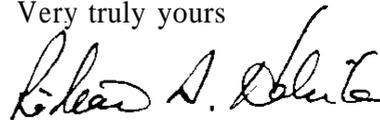
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Portals II, Filing Counter, TW-A235
445 12th Street, S.W.
Washington, D.C. 20554

**Re: MM Docket Nos. 01-19 and 01-27
Saint Joseph, Clayton, Ruston and Wisner, Louisiana**

Dear Ms. Dortch

Submitted on behalf of Communications Capital Company II of Louisiana, LLC, are an original and four (4) copies of a Petition for Reconsideration regarding the above-captioned consolidated rule making to amend Section 73.202 (b), Table of Allotments, FM Broadcast Stations.

Very truly yours



Richard A. Helmick

cc: Parties on Service List

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications' Commission

In the Matter of)	
)	
Amendment of Section 73.202 (b).)	MM Docket No. 01-19
Table of Allotments, PM Broadcast Stations)	RM-100048
(Saint Joseph, Clayton, Ruston and Wisner.)	KM-I 0027
Louisiana))	
)	
(Wisner, Kuston, Clayton and Saint Joseph)	MM Docket No. 01-27
Louisiana))	RM- 10056
)	RM-10118

To: Chief, Audio Division, Mass Media Bureau

PETITION FOR RECONSIDERATION

Communications Capital Company II of Louisiana, LLC ("CCC"), licensee of FM Broadcast Station KNBB, Ruston, Louisiana, and successor-in-interest to Kuston Broadcasting Company, Inc. ("RCB"),^{1/} by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of Report and Order, DA 03-17, released January 8, 2003 (the "Decision")^{2/}, in the above-captioned rule making matter, by which, effective February 24, 2003, the FM Table of Allotments, Section 73.202 (b)

On March 4, 2002, Communications Capital Managers, LLC consummated the acquisition of KNBB from RCB pursuant to Commission consent, granted on September 28, 2001, in Application File No. BALH-20010806ABH. Also on March 4, 2002, Communications Capital Managers, LLC filed a short form application (File No. BALH-20020304ACW) to assign the KNBB license to CCC, that pro forma application was granted on May 1, 2002, and consummated on May 2, 2002.

This petition is timely filed within 30 days of the release date of the Decision

of the Commission's Rules. was amended for the communities listed below: as follows:

<u>Communities</u>	<u>Channel Number</u>
Saint Joseph. Louisiana	257C3
Clayton. Louisiana	266A
Wisner. Louisiana	300C3

In support of its petition for reconsideration, CCC sets forth the following.

1. In making the above FM allotments. the Decision dismissed RBC's timely filed. March 19, 2001. counterproposal to (a) upgrade KNBB, Ruston, Louisiana, from Channel 257C3 to Channel 257C2 (and to modify the KNBB license to specify operation on Channel 257C2 pursuant to the provisions of Section 1.420 (g) (3) of the Commission's Rules), (b) substitute Channel 266A for vacani Channel 257A at Clayton, Louisiana. (c) allot Channel 300C3 at Saint Joseph, Louisiana (rather than Channel 257C3 as proposed by Saint Joseph Broadcasting Company). and (d) allot Channel 279A at Wisner. Louisiana (rather than Channel 300C3 as proposed by Wisner Broadcasting Company).

2. In dismissing RBC's counterproposal, the Decision stated that on the date such **counterproposal** was filed. i.e., March 19, 2001. it was short-spaced to a pending counterproposal (RM-9991) to allot Channel 257C1 to Linden. Texas, in MM Docket 00-28. even though the Linden counterproposal had already been withdrawn by the Linden proponent on March 15, 2001. albeit such withdrawal was not approved (and formally dismissed) by the Commission until approximately one month later, on May 18, 2001, the release date of the Report and Order in MM Docket 00-28. 16FCC Rcd 10853 (Allocations Branch 2001)). Accordingly, RBC's counterproposal was not deemed to be

technically correct and substantially complete at the time it was filed and, for that reason, was dismissed without consideration on the merits

3. The case precedents cited by the Commission staff to support its procedural dismissal of the RHC counterproposal generally involve situations where a rule making proposal is (a) fully spaced to a currently licensed facility of a station, but short spaced to an outstanding construction permit of the station and, therefore, contingent upon the building and licensing of facilities set forth in an outstanding construction permit,^{3/} (b) contingent on the outcome of another contested proceeding that was not final due to a pending petition for reconsideration,^{4/} or (c) defective for lack of critical technical information or failure to provide city grade coverage over proposed community.^{5/} These situations are simply inapposite in that RBC's counterproposal was contingent solely on the Commission's formal dismissal of the conflicting Linden, Texas, counterproposal in MM Docket No. 00-228 (which proposal did not involve authorized facilities and, moreover, had already been withdrawn by the proponent before RCB timely filed its counterproposal in the instant proceeding) and was not dependent on the action of any third party (other than the Commission): indeed, the Commission formally dismissed the Linden, Texas, counterproposal on May 18, 2001, and that decision became

See, e.g., Cut and Shoot, Texas, 11 FCC Rcd 16383 (Policy and Rules Div. 1996)

¹ See, e.g., Esperanza, Puerto Rico, Christiansted, Virgin Islands, 11 FCC Rcd 2908 (Policy and Rules Div. 1996); Oxford and New Albany, Mississippi, 3 FCC Rcd 615 (Policy and Rules Div. 1988), recon. denied, 3 FCC Rcd 6626 (1988); and Frederiksted, Virgin Islands and Culebra and Carolina, Puerto Rico, 10 FCC Rcd 13627 (Allocations Br. 1995).

See, e.g., Cloverdale, Montgomery and Warrior, Alabama, 12 FCC Rcd 2090 (Policy and Rules Div. 1997), aff'd 15 FCC Rcd 11050 (2000); Carlisle, Irvine and Morehead, Kentucky, 12 FCC Rcd 13181 (Allocations Br. 1997); Provincetown, Dennis, Dennis Port West Yarmouth and Harwich Port, Massachusetts, 8 FCC Rcd 19 (Policy and Rules Div. 1992) Broken Arrow and Bixby, Oklahoma, and Coffeenville, Kansas, 3 FCC Rcd 6507 (Policy and Rules Div. 1988), recon. denied, 4 FCC Rcd 6981 (1989).

final approximately 18 months prior to the staff's dismissal of RBC's counterproposal in this proceeding.

4. The rationale for Commission's procedural dismissal policy as to contingent or defective rule making proposals is that processing contingent proposals, which may become moot because they are based on a speculative outcome, is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the staff (which 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). See, e.g., Auburn, Northport, Tuscaloosa, et al., Alabama, DA 02-2063, released August 30, 2002, at para. 4, recon. pending:. Proposals and counterproposals are supposed to be capable of being effectuated at the time they are granted and cannot be contingent upon future actions of third parties such as where authorized facilities are never built and licensed. Cut and Shoot, Texas, supra, 11 FCC Rcd at 16384. This rationale has no relevance to the instant proceeding.

5. Moreover, RBC's counterproposal did not cause any delay in rendering a decision in the instant proceeding and has not prejudiced any party to this proceeding as it was timely filed and all parties had an opportunity to file reply comments. Indeed, the only party to be prejudiced is CCC, RBC's successor-in-interest, since the Commission staff's summary dismissal of the RRC counterproposal on a baseless technicality without any consideration on the merits forecloses it from upgrading KNBB,

6. There is simply no public interest or policy justification for the Commission staff's Decision dismissing the Ruston counterproposal and, moreover, such

dismissal is not supported by any relevant case precedents. This would appear to be a case of first impression and, therefore, worth) of a second look to insure that the Commission has not placed form over substance or procedural policies over the public interest. Accordingly, CCC submits that the Kuston counterproposal should be considered on its merits and adopted as such counterproposal results in the most efficient and beneficial use of spectrum while providing appropriate channel allocations to all of the communities at issue.

Respectfully submitted

COMMUNICATIONS CAPITAL
COMPANY II OF LOUISIANA, LLC

By: 
Richard A. Helmick

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Its Attorneys

January 15, 2003

CERTIFICATE OF SERVICE

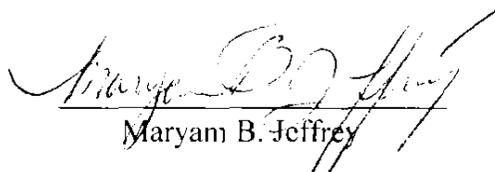
I, Maryam B. Jeffrey, hereby certify that on January 15, 2003, a copy of the foregoing "**PETITION FOR RECONSIDERATION**" was sent by First Class mail, postage pi-~~paid~~. to the following:

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