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Before the
Federal Communications Commission
Washington, DC 20554

JUL - 7 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MB Docket No. 03-35
)	RM-10646
Amendment of Section 73.202(b),)	RM-10713
Table of Allotments,)	RM-10714
FM Broadcast Stations.)	
(Florence, South Carolina))	

To: Assistant Chief, Audio Division
Media Bureau

REPLY TO COUNTERPROPOSAL

Miller Communications, Inc. ("Miller"), by its attorneys and pursuant to Sections 1.405, 1.415 and 1.420(d) of the Commission's Rules, hereby files this Reply to the Counterproposal filed March 31, 2003, by Bulldog Broadcasting ("Bulldog") that proposes to allot Channel 238C3 to Greeleyville, South Carolina. Bulldog's Counterproposal was filed in response to the Commission's proposed amendment of Section 73.202(b) of the Rules as set forth in the Commission's *Notice of Proposed Rule Making*, DA 03-369, released February 7, 2003 ("NPRM"). That NPRM, issued at the request of SSR Communications, Incorporated, proposes the allotment of Channel 237A to Florence, South Carolina, as that community's second FM aural transmission service. On March 31, 2003, Miller timely filed its "Comments and Counterproposal" that proposes to allot Channel 237A to Quinby, South Carolina, as its first local aural transmission service. Bulldog, on March 31, 2003, filed a Counterproposal seeking to (1) allot FM Channel 238C3 to Greeleyville, South Carolina, as a first local service, and (2)

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to change the channel of WIBZ, Wedgefield, South Carolina¹, from Channel 238A to Channel 240A. Miller's and Bulldog's Counterproposals appeared on Public Notice, Report No. 2611, released June 19, 2003, which afforded interested parties 15 days to file replies.² On April 15, 2003, Miller filed a Consolidated Reply to Comments and Counterproposal showing that its counterproposal to allot Channel 237A to Quinby, South Carolina, would result in a preferential arrangement of allotments, since it is preferred to either of the other proposals. Miller incorporates herein the showings made in Miller's April 15, 2003, Reply. In support of the allotment of Channel 237A to Quinby and the denial of the Bulldog Counterproposal, Miller shows the following:

**Comparison of Quinby to Greeleyville
Quinby Is almost Twice as Populous as Greeleyville**

Miller's proposal to provide a first local transmission service to Quinby³ (population 842) is preferred to Bulldog's proposal to provide a first local transmission service to Greeleyville (population 452). As both Miller and Bulldog propose first local transmission services, and Quinby is almost twice as populous as Greeleyville, the allotment of Channel 237A to Quinby is preferred to the allotment of Channel 238A to Greeleyville, under Priority 4 (other public interest factors). In light of long-standing Commission precedent, the new allotment should be given to Quinby as the larger of the two communities. See *Sparta and Buckhead, Georgia*, 15 FCC Rcd 21536 (2000);

¹ Miller is licensee of WIBZ. On March 31, 2003, Miller filed a minor change application (File No. BPH-20030331AAI) that is in conflict with the Florence proposal set out in the NPRM.

² Replies are due by July 7, 2003, so this Reply is timely filed.

³ In its Comments and Counterproposal, Miller made a showing pursuant to the precedent of *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) and *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) that Quinby is not dependent on Florence, South Carolina, and that the stations licensed to the Florence Urbanized Area should not be attributed to Quinby.

Calico Rock and Leslie, Arkansas, 12 FCC Rcd 20174 (1997); *St. Marks and Woodville, Florida*, 12 FCC Rcd 11957 (1997); *Bostwick and Good Hope, Georgia*, 6 FCC Rcd 5796 (1991); *Three Oaks and Bridgman, Michigan*, 5 FCC Rcd 1004 (1990); and *Clarksville and Lane, Indiana*, 4 FCC Rcd 4968 (1989).

Moreover, under Priority 4, additional public interest factors compel the allotment of Channel 237A to Quinby. Under Priority 4 the Commission makes this determination by comparing the populations in the respective gain areas of the conflicting proposals. *See, Greenup, Kentucky and Athens, Ohio*, 52 FCC Rcd 4319 (1987). The Technical Statement submitted as a part of Miller's April 15 Reply shows that the protected service contour for a Class A station operating on Channel 237A at Quinby would provide service to 134,111 persons while the protected service contour for a Class C3 station operating on Channel 238C3 at Greeleyville would provide service to only 88,317 persons. Further, the proposed WIBZ minor change facility will provide service to 123,176 persons while the WIBZ licensed facility serves only 116,113 persons. This represents an improvement of service to 52,857 persons within the 60 dBu contours of the Quinby proposal over the Greeleyville proposal.

Station WIBZ, Wedgefield, South Carolina

In order to accommodate Bulldog's counterproposal for Greeleyville, it will be necessary to modify the license of Miller's Station WIBZ, Channel 238A, at Wedgefield, South Carolina, by substituting Channel 240A at Wedgefield, and modifying the license for WIBZ. Bulldog requested the Commission to issue an Order to Show Cause to Miller to change its channel. Miller objects to changing its channel. Should the Commission issue to Miller an Order to Show Cause, Miller will oppose changing channels. As noted,

supra, at footnote 3, on the Comment Date in this proceeding, March 31, 2003, Miller filed a minor change application for WIBZ (File No. BPH-20030331AAI) which is in conflict with SSR's proposal to use Channel 237A at Florence, South Carolina. As shown in the Technical Comments attached to Miller's April 15, 2003, Reply, Channel 240A cannot be used at Wedgefield by WIBZ at its reference coordinates because the WIBZ minor change application site is shortspaced and precluded by WAVF, Channel 241C1, Hanahan, South Carolina. Because the WIBZ application was timely filed by the date for filing comments, it must be considered along with the other proposals in this docketed proceeding. Miller urges the Commission to consider the impact on WIBZ of not being able to implement the minor change for which it has applied if Channel 238C3 is allotted to Greeleyville.

Station WIXV, Savannah, Georgia

In order to allot Channel 238C3 to Greeleyville, Bulldog proposes to change the reference coordinates of WIXV, Channel 238C1, Savannah, Georgia, to North Latitude 32° 06' 18", West Longitude 81° 29' 17". To do so, Bulldog filed a statement of the licensee of WIXV, Cumulus Licensing Corp. ("Cumulus"), consenting to the change in reference coordinates. Unfortunately, that set of coordinates short-spaces another application (File No. BPH- 20030402AEB) for WWBD, Bamberg, South Carolina, that Miller filed on April 2, 2003. The minor change is contingent upon the acquisition by Miller of Station WWBD.⁴ Miller previously reported that it has requested that Cumulus provide a statement agreeing to specify reference coordinates for WIXV to **North Latitude 32° 05' 05" and West Longitude 81° 29' 17"** that will clear both the

⁴ See File No. BALH-20030402ADV, which has been granted, but not yet consummated.

Greeleyville proposal and WWBD. However, Miller has not obtained Cumulus' agreement. In the event Miller is unsuccessful at obtaining Cumulus' voluntary consent, Miller believes that the Commission can, and should, on its own motion, change the reference coordinates for WIXV to **North Latitude 32° 05' 05" and West Longitude 81° 29' 17"**. The Commission has stated that it attempts to eliminate conflicts between coordinates specified by applicants and those specified by rule making proponents by designating an alternate site or channel of the rule making proposal. See *Bon Air, Chester, Mechanicsville et al*, 7 FCC Rcd 6309 (1992). If required, Miller will reimburse Cumulus for its reasonable and prudent expenses incurred in changing the reference coordinates for WIXV.

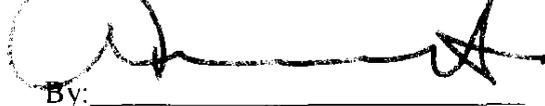
Conclusion

In light of the above, the Commission should deny Bulldog's proposal to allot Channel 238C3 to Greeleyville, South Carolina, and instead, allot Channel 237A to Quinby, South Carolina. Miller renews its expression of interest in Channel 237A at Quinby; i.e., should the Commission allot Channel 237A at Quinby, South Carolina, Miller will file an application for a construction permit for a new FM station on the channel, and if Miller obtains the permit, Miller will construct and operate the station.

Wherefore, Miller respectfully requests the Commission to adopt its counterproposal to allot Channel 237A to Quinby, South Carolina, and to DENY Bulldog's Counterproposal to allot Chanel 238C3 to Greeleyville, South Carolina.

Respectfully submitted,

MILLER COMMUNICATIONS, INC.



By: _____

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July 7, 2003

CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on July 7, 2003, copies of the foregoing counterproposal were sent via First Class Mail, postage pre-paid to the following:

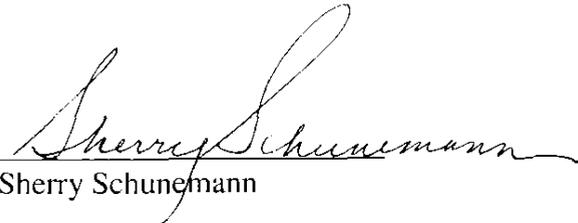
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