

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Cheboygan, Rogers City, Bear Lake, Bellaire,)
Rapid River, Manistique, Ludington, Walhalla)
and Onaway, Michigan))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 00-69
RM-9850
RM-9945
RM-9946

To: Assistant Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION

Fort Bend Broadcasting Company ("Fort Bend"), licensee of Station WCUZ(FM), Bear Lake, Michigan, by its attorneys, and pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), replies to the Opposition of Lake Michigan Broadcasting, Inc. ("Lake Michigan") to Fort Bend's Petition for Partial Reconsideration.¹ Fort Bend seeks the substitution of fully spaced FM Channel 291A for the presently assigned grandfathered short spaced FM Channel 261A at Bear Lake as was proposed in this proceeding and the modification of the license of WCUZ to reflect operation on Channel 291A. Lake Michigan opposes this request on procedural and substantive grounds. It fails on both grounds.

1. Lake Michigan urges the Commission to dismiss Fort Bend's petition as repetitious, citing Section 1.429(i) of the Commission's Rules. However, this rule is clearly inapplicable here. The reason for the rule against repetitious reconsiderations is to ensure that the process is not used "for the mere reargument of points previously advanced and rejected."

¹ This reply is timely filed since notice of the Petition for Partial Reconsideration was published in the Federal Register on July 14, 2003. See 47 C.F.R. § 1.420(f).

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Communications and Control, Inc., 18 FCC Rcd 13448 at ¶ 10 (2003). Thus, the Commission may, under this rule, dismiss a petition whose contents were “previously considered and rejected in a prior order on reconsideration.” *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, 17 FCC Rcd 8520, 8525-26 (2002). But in this case, Fort Bend is not rearguing points previously rejected. Indeed, the Commission has not directly addressed the matters raised in Fort Bend’s petition. Instead, Fort Bend is making a new argument – one that was not addressed in the Commission’s previous decisions.²

2. Turning to the substance of the petition, Fort Bend is merely requesting that the Commission make certain changes to the Table of Allotments that have already been proposed, set out for public comment, and passed upon in this proceeding. Lake Michigan casts this as “an entirely new rule making proceeding with different engineering issues and different considerations,” but it is not. *See* Opposition of Lake Michigan at 5. It is an intact portion of the original counterproposal, minus the allotment that the Commission ruled defective.

3. The original counterproposal proposed to relocate Station WCUZ from Bear Lake, Michigan to Bellaire, Michigan, with a “backfill” allotment at Bear Lake.³ The Commission held that the Bellaire allotment was defective. However, the former “backfill” allotment is not defective, and indeed, has accompanying public interest benefits. It will eliminate a preexisting short spacing and allow WCUZ to increase its power and transmitter height to the equivalent of full Class A facilities. The allotment can be made as originally

² In the alternative, the Commission could treat this Petition for Reconsideration as an Application for Review.

³ Specifically, D&B Broadcasting LLC (“D&B”), Fort Bend’s predecessor as licensee of WCUZ (formerly WSRQ) had proposed to delete Channel 261A at Bear Lake, Michigan and allot Channel 260C1 to Bellaire, Michigan. To avoid the loss of Bear Lake’s sole transmission service, D&B proposed that fully spaced Channel 291A be allotted to Bear Lake as a “backfill” channel. In order to make this allotment, Channel 254A must be substituted for Channel 292A at the current transmitter site of WKLA-FM, Ludington, Michigan, and Channel 293A must be substituted for vacant Channel 255A at Walhalla, Michigan.

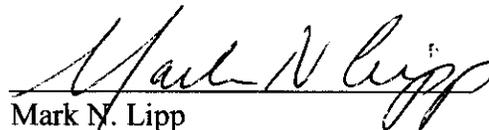
proposed in this proceeding, with channel substitutions at Ludington, Michigan and Walhalla, Michigan. The required channel studies and engineering showings have already been made; the Commission has already issued an Order to Show Cause to Lake Michigan for the change to WKLA-FM at Ludington; and the Walhalla allotment is vacant. Public comment has already been solicited on all of these changes. There are no new engineering or procedural issues. The public interest in deleting a short spaced allotment and permitting an increase from a 3 kW to a 6 kW facility to serve Bear Lake should be the overriding concern in this proceeding.

Accordingly, Fort Bend respectfully requests that the Commission modify the FM Table of allotments to substitute Channel 291A for 261A at Bear Lake, Michigan, as proposed by Fort Bend for use by Station WCUZ.

Respectfully submitted,

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August 8, 2003

CERTIFICATE OF SERVICE

I, Lisa Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 8th day of August, 2003, caused to be hand-delivered or mailed by first class mail, postage prepaid, copies of the foregoing “**REPLY TO OPPOSITION**” to the following:

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