

ORIGINAL

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

DOCKET FILE COPY ORIGINAL

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Anniston and Ashland, Alabama, )  
College Park, Covington, and )  
Milledgeville, Georgia) )

MM Docket No. 98-112  
RM-9027  
RM-9268  
RM-9384

RECEIVED

DEC - 5 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Marlene H. Dortch, Office of the Secretary  
The Commission

CONSOLIDATED OPPOSITION  
TO

“FIFTH MOTION FOR LEAVE TO SUPPLEMENT THE RECORD” AND “SECOND  
MOTION FOR LEAVE TO FILE SUPPLEMENT TO COMPLAINT AND REQUEST  
FOR INVESTIGATION”

WNNX LICO, Inc. (“WNNX LICO”), by its counsel, hereby opposes (1) the “Fifth Motion for Leave to Supplement the Record”; and (2) the “Second Motion for Leave to File Supplement to Complaint and Request for Investigation” filed by Preston W. Small in the above-captioned proceeding. In support whereof, the following is shown:

I. **The Commission Should Deny Small’s Fifth Motion for Leave to Supplement The Record.**

1. The Commission should deny Small’s Fifth Motion for Leave to Supplement the Record (“Fifth Motion”) because there is no cause shown for its acceptance. Having already submitted four motions for leave to supplement the record, Small has had more than adequate opportunity to present to the Commission the factual information that he believes is necessary for the consideration of his position. The Commission’s policy is *not* to allow parties to continually argue and reargue their positions. See 47 C.F.R. §§ 1.415(d) (“No additional comments may be filed unless specifically requested or authorized by the Commission”); 1.429(e) (“No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered,

except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement”). *See also Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1996) (“the Commission need [not] allow the administrative process to be obstructed or overwhelmed by copious or purely obstructive protests”).

2. If there is good cause for the acceptance of new material into the record of a proceeding, the Commission has the authority to accept it. In this case, however, there is not only no good cause, there is no cause whatsoever. The factual material contained in this Fifth Motion deals with two subject areas: (1) the Hartsfield International Airport, and (2) a lawsuit in state court in Georgia. As to the airport, Small wishes the Commission to accept the supplementary information simply because “it has been more than five years since factual information was filed in this case.” Fifth Motion at 2. That statement is absurd. It hardly seems as though five *minutes* have passed since Small’s last attempt to file factual information in this proceeding. He could have filed information about the airport in his first, second, third, or fourth motions for leave to supplement the record. No change in circumstance justifies consideration of this material now, and in any event, the material is merely repetitive, having already been submitted by Small on several previous occasions.<sup>1</sup>

3. As to the lawsuit, Small makes the astounding assertion that he should be entitled to supplement the record in order to inform the Commission that *nothing* has happened. Fifth Motion at 4. From the fact that nothing has happened, Small wishes to draw the conclusion that unseen hands are conspiring to prevent him from achieving his goals in this proceeding. Fifth Motion at 5. The Commission does not need to be burdened with another of Small’s motions every time nothing happens, nor does it need to be subjected to Small’s endless speculation on his version of events.

---

<sup>1</sup> *See, e.g.,* Petition for Reconsideration and Request for Protection at 18-22 (filed March 30, 2001); Petition for Reconsideration at 17-21 (filed March 12, 2001).

4. Because Small has not shown good cause for the acceptance of the factual information therein, his Fifth Motion should be summarily denied. WNNX LICO will not address the substance of this pleading. Small has, on previous occasions, attempted to turn WNNX LICO's silence against it.<sup>2</sup> As WNNX LICO has stated previously, its silence can in no way be taken as assent. WNNX LICO has consistently refused to be drawn into Small's speculative attempts to discredit it in this and other proceedings. Small's allegations do not automatically become true when WNNX LICO fails to rebut them.

**II. The Commission Should Deny The Second Motion for Leave to File Supplement to Complaint and Request for Investigation.**

5. The Commission should also deny Small's "Second Motion for Leave to File Supplement to Complaint and Request for Investigation" ("Second Motion"). The Second Motion discusses a letter from the Commission's Office of General Counsel to Senator Sessions of Alabama. The sole reason for acceptance of the supplement given by Small is that the information it contains "is potentially disqualifying to WNNX/Susquehanna." Second Motion at 1. However, Small provides no rational basis whatsoever for connecting WNNX LICO with the Sessions letter or the similar letter from Senator Richard Shelby. Small's argument runs like this: (a) whoever is responsible for the congressional letters must speak up; (b) WNNX LICO failed to speak up; (c) therefore WNNX LICO is responsible and should be sanctioned. Second Motion at 2. This argument is obviously irrational, and it is reckless and negligent as well.<sup>3</sup> For

---

<sup>2</sup> See "Notice of No Response Received to Third and Fourth Motions for Leave to File Supplement and Request for Entry of Adverse Findings Against WNNX LICO, Inc." (filed Jan. 2, 2003).

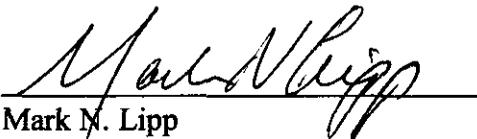
<sup>3</sup> Section 1.17 of the Commission's Rules prohibits a party from making any material statement of fact without a reasonable basis for believing it to be true. 47 C.F.R. § 1.17(a)(2) (2003). The rule applies to parties in proceedings, such as this one, to amend the table of allotments. 47 C.F.R. § 1.17(b)(5). In two separate pleadings filed mere days apart, Small has (1) specifically blamed WNNX LICO for acts it did not commit, and (2) specifically alleged that WNNX LICO has engaged in dishonest conduct before the Commission. Small admits that he made those statements simply because WNNX LICO failed to deny the conduct in question. That is not a rational basis for believing those allegations to be true. There is not a shred of evidence connecting WNNX LICO to a

the reasons given above, WNNX LICO refuses to engage Small in his fantasy world, and its silence cannot be taken as assent to his wild allegations.

6. For the record, WNNX LICO states that it had no contact, directly or indirectly, with Senator Sessions or Senator Shelby or their respective staffs; it did not solicit letters from them, and had nothing to do with the preparation or filing of either letter.

WHEREFORE, for the foregoing reasons, the Commission should deny Small's Fifth Motion to Supplement the Record and Small's Second Motion to Supplement the Record.

Respectfully submitted,  
WNNX LICO, INC.

By:   
Mark N. Lipp  
J. Thomas Nolan  
Vinson & Elkins, LLP  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 639-6500  
Its Counsel

December 5, 2003

---

conspiracy with any other entity as Small alleged in his Fifth Motion. There is not a shred of evidence connecting WNNX LICO to the letters from Senators Shelby and Sessions as Small alleged in his Second Motion. Not only did Small make his allegations with no rational basis for believing them to be true, he made them in reckless disregard of their truth or falsity. Moreover, both pleadings are frivolous. The Fifth Motion is repetitive and without any substantive purpose, and the entire basis of the Second Motion – a purported violation of the *ex Parte* rules – is lacking in foundation, since all parties had actual notice of the letters in question. Frivolous pleadings are specifically prohibited under Section 1.52. See *Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd 3030 (1996) (defining a “frivolous pleading” as one that lacks good grounds for its support, or which is filed without any effort to review the underlying facts). The Commission’s Rules were designed to prevent parties like Small from abusing the Commission’s processes in order to level reckless accusations against Commission licensees. WNNX LICO has repeatedly and emphatically denied involvement in the various unbelievable schemes Small has dreamed up. The Commission should not tolerate any further nonsense from Small. See *Rainey Rob L.L.C., et al.*, FCC 03-301 (rel. Nov. 25, 2003).

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that on this 5th day of December, 2003, I have mailed the foregoing "Consolidated Opposition" to the following:

Hon. Richard Shelby  
United States Senate  
110 Hart Senate Office Building  
Washington, D.C. 20510-0103

Hon. Jeff Sessions  
United States Senate  
335 Russell Senate Office Building  
Washington, D.C. 20510-0103

John Rogovin, General Counsel  
Joel Kaufman, Dep. Assoc. Gen. Counsel  
Federal Communications Commission  
Washington, D.C. 20554

Timothy E. Welch, Esq.  
Hill & Welch  
1330 New Hampshire Avenue, NW  
Suite 113  
Washington, DC 20036  
(Counsel to Preston W. Small)

Erwin G. Krasnow  
Shook, Hardy & Bacon, LLP  
600 14th Street, N.W., Suite 800  
Washington, D.C. 20005-2004  
(Counsel to RSI)

Kevin F. Reed  
Elizabeth A.M. McFadden  
Nam E. Kim  
Dow, Lohnes & Albertson PLLC  
1200 New Hampshire Ave., N.W., #800  
Washington, D.C. 20036  
(Counsel to Cox)

Auburn Network, Inc.  
c/o Lee G. Petro  
Gardner, Carton & Douglas  
1301 K Street, N.W., East Tower, Suite 900  
Washington, D.C. 20005

Marengo Broadcast Association  
5256 Valleybrook Trace  
Birmingham, AL 35244

Mark Blacknell  
Womble, Carlyle, Sandridge & Rice  
1401 Eye Street NW, Suite 700  
Washington, D.C. 20005

Williamson Broadcasting, Inc.  
702 East Battle Street, Suite A  
Talladega, AL 35161

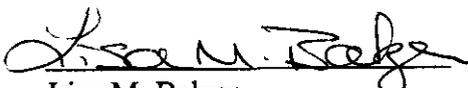
Scott Communications, Inc.  
273 Persimmon Tree Road  
Selma, AL 36701

Southeastern Broadcasting Co.  
P.O. Box 1820  
Clanton, AL 35045

Dan J. Alpert  
2120 North 21st Road  
Arlington, VA 22201

Joan Reynolds  
Brantley Broadcast Associates  
415 North College Street  
Greenville, AL 36037

James R. Bayes  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

  
Lisa M. Balzer