

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
(Arlington, The Dalles, and Moro, Oregon )  
and Covington and Trout Lake, Washington))

MB Docket No. 02-136

To: Marlene Dortch, Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

STATEMENT FOR THE RECORD

1. CRISTA Ministries, Inc. ("CRISTA"), licensee of KWPZ(FM), Lynden, Washington, through counsel, hereby submits this Statement for the Record to assure that the record in this proceeding is clear with respect to CRISTA's concern about the protection of its service area.

2. Station KWPZ(FM) operates on 106.5 MHz, Channel 293C, in Lynden, Washington. Neither CRISTA, nor KWPZ(FM), nor Channel 293C in Lynden, has been mentioned by the Commission or any of the parties hereto in the various proposals presently under consideration. Accordingly, CRISTA has not previously believed that it had any interest in this proceeding, and it has not participated herein.

3. However, it has recently come to CRISTA's attention that one or more of the parties hereto has or have apparently taken steps which could lead to serious adverse consequences for Station KWPZ(FM). The extraordinary steps which have been taken, and the likely consequences thereof, have thus far emerged only partially and indirectly, in a passing remark buried in the conclusion of a letter which was itself buried as an attachment to a pleading (an

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opposition to a motion for leave to file a supplement herein) which, on its face, appeared to have negligible substantive significance. As a result of the sketchy nature of the information and the indirect way in which it has been lodged with the Commission, the Commission may not be fully aware of the underlying circumstances. Since at least one component of one of the proposals under consideration in this proceeding appears to be contingent to some degree on Commission acceptance of and cooperation in the highly unusual – and legally suspect – approach taken by some of the parties herein, CRISTA believes it of overriding importance to set the record straight through the instant Statement.

4. One component of the elaborate counterproposal submitted by First Broadcasting Company, L.P., Saga Broadcasting Corp. (“Saga”) and Mid-Columbia Broadcasting, Inc. (collectively, the “Joint Parties”) involves Station KAFE(FM), Bellingham, Washington, which is licensed to Saga. Station KAFE(FM) currently operates on Channel 282C. In order to accommodate various other changes proposed by the Joint Parties, KAFE(FM) would have to move to Channel 281C. But Channel 281C in Bellingham would be short-spaced to a number of Canadian allotments, including Channel 281A at Bralorne, British Columbia. As a result, the Joint Parties proposed, *inter alia*, that that proposed allotment be “coordinated with Canada as a specially negotiated short-space allotment.” *See, e.g.*, the Joint Parties’ Comments and Amended Proposal, filed July 29, 2002, at 11. In so suggesting, the Joint Parties argued that “due to significant terrain blockage, no actual interference will occur to a facility operating on Channel 281A at Bralorne”. *Id.* at 12.<sup>1</sup>

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<sup>1</sup> Station KAFE(FM) *could* operate on Channel 281C without running afoul of any Canadian allotments, but to do so it would have to reduce power or directionalize – and Saga has indicated some reluctance to do so. *See* Saga’s Reply Comments, filed August 13, 2002 at 5.

5. Of course, it is well established that the Commission does *not* recognize terrain shielding at the allotment stage. *E.g.*, *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Stations (Florence and Comobabi, Alabama)*, 15 FCC Rcd 9693, 9694, n. 4 (Allocations Branch 2000); *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Stations (Boscawen and Belmont, New Hampshire)*, 2 FCC Rcd 7309, 7310 (Policy and Rules Division 1987). Nor is terrain shielding considered for protection purposes internationally, as demonstrated below. Still, the Joint Parties suggested that they wished to pursue such an approach.

6. Up to this point, CRISTA and Station KWPZ(FM) still had not yet been drawn involuntarily into this proceeding, as far as the record reflected.

7. But in March, 2004, the Joint Parties submitted an "Opposition to Motion for Leave to File Supplement and Request for Expedited Action". This was an incidental pleading in a side skirmish that the Joint Parties were fighting with a party which has opposed the Joint Parties' counterproposal. It was certainly not the type of pleading in which one might ordinarily expect to find significant revelations of important facts.

8. Included as an exhibit to that pleading was a copy of a letter, dated January 5, 2004, from Paul Vaccani, an official of Industrie Canada, to Kathryn O'Brien, an FCC official. The letter reflected, *inter alia*, the proposed Channel 281C allotment at Bellingham, and included the following closing paragraph:

In regards to the Bellingham proposal, the Department [of Industrie Canada] would like to note that we have been approached by representatives of KAFE(FM) in regards to assigning unlimited class C status to the proposed channel 281. Although terrain is not usually considered for protection purposes internationally, we would in this instance be prepared to consider such protection and other issues in this case only, should the Commission wish to pursue this further. However, please be advised that the Department will in the very near future be submitting a notification for a new allotment on

channel 292 in Vancouver, BC and would expect *some reciprocity in regards to considering similar terrain protection to channel 293C in Lynden, WA.*

See Attachment A hereto (emphasis added).

9. And so CRISTA and Station KWPZ(FM) – which operates on Channel 293C in Lynden – came to be embroiled in this matter. It appears from Mr. Vaccani’s letter that Industrie Canada and the Commission, at the suggestion of some “representative of KAFE(FM)”<sup>2</sup>, may be negotiating to horse-trade a short-spacing to Canadian channels in return for a short-spacing to a U.S. channel. And the swap would apparently be justified by terrain shielding, even though, as noted above, the Commission does *not* rely upon terrain shielding in the allotment process, and even though, as Mr. Vaccani expressly states, “terrain is not usually considered for protection purposes internationally.”

10. The purpose of the instant Statement is to assure that the record reflects the following:

- CRISTA has *not* been notified by *anyone* about the fact that plans were afoot to subject it to short-spacing from a Canadian station. Rather, CRISTA learned of this only when the reference to that potential short-spacing in Mr. Vaccani’s letter came to CRISTA’s attention after the letter was submitted with the Joint Parties’ March, 2004 pleading;
- ◆ CRISTA has *not* consented to any short-spacing to Channel 292, Vancouver, BC, whether based on notions of terrain shielding or any other basis;

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<sup>2</sup> Mr. Vaccani’s assertion that Industrie had “been approached by representatives of KAFE(FM)” is troubling in light of the Logan Act’s proscription against efforts by private parties to directly influence foreign negotiations with the U.S. government. See 18 U.S.C. §953. Whether one or more of the Joint Parties may have violated the Logan Act is a matter that the Commission may wish to explore. And even if no violation has occurred here, the Commission should in any event take pains to discourage private parties from undertaking private initiatives before foreign governments, particularly initiatives which hinge on the presumed applicability of standards which have not previously been applied, and also particularly where the unprecedented application of such standards would adversely affect entities who have no notice of the initiatives.

- ◆ CRISTA objects to any effort by the Commission or any private parties to negotiate away interference protection to which CRISTA is unquestionably entitled.

11. CRISTA recognizes that the proposed unrestricted allotment of Channel 281C to Bellingham may not be an essential element of the Joint Parties' counterproposal, since Saga has apparently demonstrated a willingness to accept a requirement that it directionalize its signal in order to protect the Canadian allotment. *See* Saga's Reply Comments, filed August 13, 2003, at 5. And if in fact the Commission chooses to resolve the various competing allotment proposals here in a manner which does not involve in any way any possibility that CRISTA's operation could be subject to short-spacing of any sort, then CRISTA has no objection at all.

12. But the Commission and the parties should be on notice that, if the goal here is to effectuate the Joint Parties' proposal complete with unrestricted Class C facilities for Channel 281 at Bellingham, and if that goal can be attained only through some international tit-for-tat in which CRISTA's station will be subject to potential interference from Canada, then CRISTA will insist on full procedural due process (as guaranteed by, *e.g.*, 47 U.S.C. §316) and on full conformity with all established allotment standards. To date it appears that CRISTA has been accorded neither.

Respectfully submitted,

  
Harry E. Cole  
Lillian E. Ward  
Counsel for CRISTA Ministries, Inc.

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Date: April 2, 2004

## DECLARATION

Tony Bollen, under penalty of perjury, hereby declares the following to be true and correct:

1. I am General Manager of Station KWPZ(FM), Channel 293C, Lynden, Washington, which is licensed to Crista Ministries, Inc. ("Crista"). I am preparing this Declaration for submission to the Federal Communications Commission ("FCC") in connection with a Statement for the Record on behalf of Crista in MB Docket No. 02-136, relating to proposed FM allotments to various communities in Washington and Oregon.

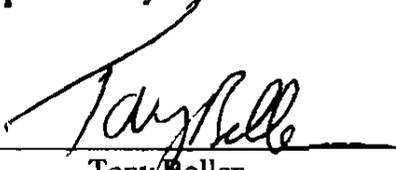
2. It has come to Crista's attention that, in a letter, dated January 5, 2004, sent by an official of Industrie Canada to an FCC official, Industrie Canada has indicated a willingness to accept one of the U.S. FM allotments proposed in MB Docket No. 02-136, an allotment which would be short-spaced to certain Canadian allotments. According to the letter, in order to accept that U.S. allotment, Canada would be willing to consider terrain shielding, even though terrain shielding is not usually considered for such purposes. The letter from Industrie Canada further suggests that Canada's willingness to accommodate the proposed U.S. allotment is subject to Canada's expectation that the FCC will afford "some reciprocity in regards to considering similar terrain protection to channel 293C in Lynden, WA." In other words, it appears that, in order to secure Canadian acceptance of the proposal in MB Docket No. 02-136, the FCC would be expected to accept a Canadian allotment which would be short-spaced to Station KWPZ(FM), which operates on Channel 293C in Lynden.

3. Crista has *not* been notified by *anyone* about the fact that plans are afoot to subject Station KWPZ(FM) to short-spacing from a Canadian station. Rather, Crista learned of this only

when the reference to that potential short-spacing in the Industrie Canada letter came to Crista's attention after the letter was submitted to the FCC in March, 2004.

4. Crista has *not* consented to any short-spacing to Channel 292, Vancouver, BC, whether based on notions of terrain shielding or any other basis.

5. Crista objects to any effort by the Commission or any private parties to negotiate away interference protection to which Crista is unquestionably entitled.

  
\_\_\_\_\_  
Tony Bollen

Date: April 2, 2004

## CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary in the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that, on the 2<sup>nd</sup> day of April, 2004, I caused to be mailed by first class mail, postage prepaid, copies of the foregoing **Statement for the Record** to the following:

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