

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

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments)
FM Broadcast Stations.)
(Ft Collins, Westcliffe and)
Wheat Ridge, Colorado))

MB Docket No. 03-57
RM-10565

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and

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Application of

Jacor Broadcasting of Colorado, Inc.)
For Construction Permit for)
Minor Change in Licensed Facility)
Station KRFX(FM), Denver, Colorado)
Facility ID No. 29731)

File No. BPH-20030424AAO

To: Secretary, to forward to Chief, Media Bureau

OPPOSITION TO MOTION TO CONSOLIDATE

Jacor Broadcasting of Colorado, Inc. ("Jacor"), the licensee of Stations
KTCL(FM), Fort Collins, Colorado, and KRFX(FM), Denver, Colorado, by its attorneys,
hereby submits this Opposition to the Motion to Consolidate dated April 5, 2004 (the
"Motion"), submitted by Meadowlark Group, Inc. ("MGI") in the above-captioned proceedings
for (a) the change in the FM Table of Allotments relating to Ft. Collins, Westcliffe and Wheat
Ridge, Colorado, and the modification of the license of KTCL to operate on Channel 227C0 at
Wheat Ridge, Colorado, MB Docket No. 03-57 (the "Wheat Ridge Proceeding"); and (b) the
application by Jacor for a minor change in the licensed facility of KRFX, FCC File No. BPH-
20030424AAO (the "KRFX Application")

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MGI asserts that in the *Report and Order*, DA 04-738 (released March 19, 2004) (the “Order”), issued in the Wheat Ridge Proceeding, the Assistant Chief, Audio Division, Media Bureau, “dismissed a Counterproposal filed by MGI . . . because of a conflict between the counterproposal and the [KRFX Application] ” ^{1/} MGI notes that it has filed a Petition for Reconsideration (the “Petition”) of the *Order* in the Wheat Ridge Proceeding and that it believes that the Division committed error by not considering the MGI Counterproposal, the Wheat Ridge proposal and the KRFX Application together.

However, the Division did not just dismiss the MGI Counterproposal in the Wheat Ridge Proceeding because of a “conflict.” Rather, the Division dismissed the MGI Counterproposal because it was impermissibly contingent on the reclassification of KRFX from a Class C to a Class C0 station, in *Order to Show Cause, Reclassification of License of Station KRFX(FM), Denver, Colorado*, DA 03-585 (Ass’t Chief, Audio Div., rel March 4, 2003) (“*Order to Show Cause*”). Specifically, the Division dismissed the MGI Counterproposal, noting that “Jacor . . . has responded to the *Order to Show Cause* by filing an application for Channel 278 as a full Class C facility. Until the application for Channel 278C at Denver is dismissed, the counterproposal filed by MGI is technically defective.” ^{2/}

In its Petition for Reconsideration of the *Order*, which is referenced in its Motion, MGI argues that the Division committed “cardinal procedural error” in dismissing the MGI Counterproposal in the Wheat Ridge Proceeding. ^{3/} Citing to inapposite case law, MGI

^{1/} See Motion at ¶ 1.

^{2/} See Order at ¶ 6 (citing *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21,649 (2000)).

^{3/} See Petition at ¶ 2.

suggests that the Division somehow inappropriately “bifurcated” the Wheat Ridge Proceeding from the distinct KRFX *Order to Show Cause* proceeding. Thus, argues MGI, the Division should have considered in the Wheat Ridge Proceeding the “merits or lack of merits of the KRFX Application,” together with the Wheat Ridge proposal and the MGI Counterproposal. ^{4/}

As Jacor has set forth in its concurrently-filed Opposition to MGI’s Petition, it would have been “cardinal procedural error,” *if* the Division had *failed* to dismiss the MGI Counterproposal, which was technically defective at the time of its filing. Specifically, the MGI Counterproposal was impermissibly “contingent on the licensing of facilities set forth in an outstanding construction permit or are dependent upon final action in another rulemaking proceeding,” ^{5/} and the Counterproposal itself could not initiate the reclassification of KRFX from Class C to Class C0. ^{6/}

Because it is dispositive that, *at the time of filing*, the MGI Counterproposal was impermissibly contingent on a request to reclassify KRFX, even if, assuming *arguendo*, the KRFX is eventually reclassified as a Class C0 station, such action would come too late to rehabilitate the MGI Counterproposal. Thus, there is no basis for MGI’s request to consolidate the Wheat Ridge Proceeding with the KRFX Application proceeding. Indeed, it appears that the issuance of the Wheat Ridge Proceeding *Order* has become yet another excuse for MGI to

^{4/} See *id.* at ¶ 8

^{5/} See *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, 18 FCC Rcd 22 at ¶13 (Ass’t Chief, Audio Div., rel. Jan. 8, 2003) (footnotes omitted).

^{6/} See *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 15 FCC Rcd 21,649 at ¶ 28 (2000) (emphasis added), see also Note 2 to Section 1.420(g) of the Commission’s Rules (“The reclassification of a Class C station in accordance with the procedure set forth in NOTE 4 to § 73.3573 may be initiated through the filing of an *original petition* for amendment of the FM Table of Allotments.”) (emphasis added)

unleash another unnecessary round of pleadings in the KRFX Application matter, in which a request for expedited action is pending. 7/

In conclusion, there is no reason to consolidate the KRFX Application matter with the MGI Counterproposal, because any action in the distinct KRFX Application matter cannot serve to rehabilitate the MGI Counterproposal's fatal defect at the time of filing – its impermissible contingency on the future, potential reclassification of KRFX as a Class C0 station. The Media Bureau should deny MGI's consolidation request and should expeditiously act on the KRFX Application.

Respectfully submitted,

**JACOR BROADCASTING OF
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April 20, 2004

7/ Jacor has chosen not to respond to the comments of MGI and others on its expedite request, as the record before the Commission in the KRFX (and KFMD) Application proceeding suffices to establish the basis for prompt Commission action.

Certificate of Service

I, A. Heidi Fogleman, hereby certify that on this 20th day of April, 2004, a copy of the foregoing **Opposition to Motion to Consolidate** was sent by first-class mail, postage prepaid, to:

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