

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment of the Commission's Rules) RM-10960
Regarding Modification of FM and AM)
Authorizations)

To: The Commission

These proposals are in response to the above-referenced petition for rule-making, filed by First Broadcasting Investment Partners, LLC. They are respectfully submitted to the Commission by John W. Barger, 8023 Vantage Drive, Suite 840, San Antonio, TX, 78230. Mr. Barger is the President of the following entities, which are general partners, controlling licensees of the indicated radio stations:

Victoria RadioWorks Business, Inc., general partner of Victoria RadioWorks, Ltd., licensee of KVIC(FM), KEPG(FM), KNAL(AM), KVNN(AM), all of Victoria, TX, and KITE(FM) of Port Lavaca, TX;

Pearsall RadioWorks Business, Inc., general partner of Pearsall RadioWorks, Ltd., licensee of KVWG(FM) and KTFM(AM) of Pearsall, TX; and

Hondo RadioWorks Business, Inc., general partner of Hondo RadioWorks, Ltd., licensee of KMFR(FM) of Hondo, TX.

With regard to the question of how to improve the procedures for FM commercial service up-grades and drop-in's, the following discussion and recommendations are offered for the Commission's consideration.

Over the past two years, the rash of nuisance application filings has reached epidemic proportion. Most recently there has been a spate of C-O down-grade show-cause filings against numerous Class C FM's under 450 meters. This is the latest episode in attempted hi-jackings dating back to the days of 80-90 and even before. Legitimate FM up-grade applications have been way-laid by nuisance filings for first and second service for isolated communities well under 1,500 population, which cannot hope to support any commercial attempt at broadcasting. The Commission, particularly its Allocations Branch, will have a rude awakening when over 250 of these "phoney" allocations come up for auction and no one files to participate, or worse yet, single filers

awarded the allocations make no effort to construct within the three-year construction permit life.

To put an end to this abuse of Commission process and avoid the FCC any further potential embarrassment, rules should immediately be established to discourage harassment and attempted extortion, by making such filings less potentially profitable for the filers.

To contain these practices the Commission's new rules and policies should:

1. Require disclosure of individuals at interest (with names, addresses, phone numbers, etc.), and no longer permit the filings to be made by attorneys on behalf of an assumed name or entity-to-be-formed;
2. Give licensees a fair opportunity to up-grade their facilities without exposure to extortionists;
3. Eliminate "deadwood" from the allocations table;
4. Make the initial filing or counter-proposal for a new city of license to be expensive enough to discourage the 37-Cent Green-Mailers;
5. Discourage the practice of applying for one change and then making the applicant's real intentions known in a counter-proposal to its own filing;
6. Still encourage legitimate applications for new service from persons and entities; and,
7. Offer incentives for persons and entities putting forth the effort to propose service, which is needed by under-served communities.

To these ends, the following suggestions are offered:

1. Return all pending allocation rule-making applications and counter-proposals for re-submission, accompanied by the appropriate filing fee called for below.
2. A new, partially refundable filing fee should be established for such applications on the order of \$10,000.00 plus \$1.00 per person residing within the proposed 60-dBu contour.
3. This fee would apply to the initial community requested in a new rule making, as well as counter-proposed communities.
4. For each allocation made, the Commission retains the filing fee; any proposals abandoned or denied by the Commission would cost the filer or

proponent (in the case of a counter-proposal) \$5,000.00, with the balance returned by the FCC within sixty days following finality.

5. Once the allocation is put up for auction, the applicant or proponent would receive a bid credit of twice the filing fee (incentive to legitimate "finders").
6. The initial bid for the allocation would be equal to the bid credit received by the applicant or proponent, who or which in turn would be the first round leader and any subsequent-round bidder would have to exceed the initial bid by 10% (existing auction rule).

Of course adoption of these suggestions will not eliminate all harassment and extortion, but such a revised allocation application scheme will go a long way to minimize the nuisance.

Respectfully submitted,

John W. Barger by Hem

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May 24, 2004

CERTIFICATE OF SERVICE

I, John W. Barger, do hereby certify that a true copy of my comments in response to the *Petition for Rulemaking* (RM-10960) was sent this 24th day of May, 2004, via United States First Class Mail, postage prepaid, to the following:

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