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Before the
Federal Communications Commission
Washington, D.C.

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SEP 22 2004
Federal Communication Commission
Bureau / Office

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Arlington, The Dalles, Moro, Fossil, Astoria,
Gladstone, Tillamook, Springfield-Eugene,
Coos Bay, Manzanita and Hermiston, Oregon
and Covington, Trout Lake, Shoreline, Bellingham,
Forks, Hoquiam, Aberdeen, Walla Walla, Kent,
College Place, Long Beach and Ilwaco, Washington)

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SEP 24 2004

Federal Communications Commission
Office of the Secretary

MB Docket No. 02-136

ORIGINAL

SEP 23 P 2:21

To: Assistant Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION OF SAGA BROADCASTING, LLC

Triple Bogey, LLC; MCC Radio, LLC and KDUX Acquisition, LLC (together "Triple Bogey") herein reply to the Opposition of Saga Broadcasting, LLC ("Saga") to Triple Bogey's Application for Review.

Saga's Opposition focuses on the question of whether Triple Bogey's otherwise superior allotment proposal to move Station KDUX-FM from Aberdeen, Washington, to Shoreline, Washington, should be dismissed because effectuation of that proposal might require Saga's Station KAFE(FM), Bellingham, Washington, to change frequency and use a directional antenna to protect two vacant Canadian allotments. Saga argues that it should not be compelled to install a directional antenna, notwithstanding that (a) it previously consented to the installment of such an antenna pursuant to an agreement with another party to this proceeding, First Broadcasting Investment Partners, LLC ("First

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Broadcasting”) and (b) operating with such directional antenna, KAFE would suffer no loss of the area or population the station serves within the United States.¹

Background. On the deadline for counterproposals in this proceeding, the Joint Petitioners, with Saga, submitted a proposal to relocate Station KMCQ, The Dalles, Oregon, to Kent, Washington.² The proposal entailed substituting Channel 281C for Channel 282C as KAFE’s operating frequency. Operating on Channel 281C, KAFE would be short-spaced to two vacant British Columbia allotments. Given those circumstances, Saga agreed that, if necessary, it would operate KAFE with a directional antenna to protect those allotments. On the same day that the Joint Petitioners and Saga filed their counterproposal, Triple Bogey submitted its counterproposal seeking, *inter alia*, to relocate Station KDUX-FM from Channel 284C2 at Aberdeen, Washington, to Channel 283C2 at Shoreline, Washington. This proposal would require the same changes in KAFE’s facilities as the Joint Petitioners/Saga counterproposal. Triple Bogey demonstrated the operation of KAFE with a directional antenna to protect the Canadian allotments in question (a) was permissible under the “special negotiated short-spacing” process established under the treaty with Canada and (b) would entail no change in the area or population within the United States covered by the KAFE 60 dBu or 70 dBu contours. *See* Triple Bogey’s Comments and Counterproposal (hereinafter “*Triple Bogey Proposal*”) at pp. 17-20 & Exhibit A at pp. 11-21. Significantly, neither of the counterproposals entailed a change in KAFE’s transmitter site or any short-spacing to a domestic allotment.

¹ Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC (together “Joint Petitioners”) filed a separate opposition, in which they, *inter alia*, make substantially the same arguments with respect to Triple Bogey’s proposed use of a directional antenna by KAFE. Given the five-page limitation that Section 1.115(f) imposes, Triple Bogey’s separate reply to the Joint Petitioners, which is being filed contemporaneously herewith, addresses issues other than KAFE’s possible use of a directional antenna. The counterarguments in the instant pleading, however, are equally applicable to the position of the Joint Petitioners with respect to the KAFE directional antenna issue.

² The Kent plan was a counterproposal to the Joint Petitioners’ initial proposal to move KMCQ to Covington, Washington.

The Joint Petitioners and Saga vigorously prosecuted their counterproposal for nearly two years. Indeed, on March 3, 2004, they requested expedited processing of that proposal. Nine days later, the Commission's staff issued an *Order to Show Cause* (DA 04-607, released March 12, 2004), which directed Saga to show cause why the KAFE license should not be modified to accommodate Triple Bogey's Shoreline allotment proposal. Noting that the modification of KAFE that Triple Bogey sought was consistent with the modification contemplated in the agreement between Saga and the Joint Petitioners, the order directed Saga and the Joint Petitioners to disclose the consideration Saga was to receive under their agreement. Triple Bogey was directed to indicate whether it would match that consideration. Triple Bogey responded that it would do so if the as-of-yet-undisclosed amount was commercially reasonable and it was required to do so to secure approval of its Shoreline proposal. But rather than disclose the terms of their agreement, the Joint Petitioners and Saga abruptly abandoned their Kent counterproposal.³ They cited no reason for doing so.

Discussion. As an initial step in the analysis, it is important to underscore the factors not involved in this case. First, the case does *not* involve the relocation of the KAFE transmitter site. Second, the case does *not* involve any issue of short-spacing to a domestic allotment.⁴ Third, the case does *not* involve the loss of any area or population within the United States currently served by KAFE. The only area that KAFE might lose service would be in Canada and under the treaty with Canada, a

³ Saga submitted to the Commission only the two documents comprising Saga's agreement with the Joint Petitioners. Saga requested confidential treatment of those items. Triple Bogey opposed the confidentiality request. To date, the Commission has not acted on Saga's request.

⁴ Indeed, if the domestic spacing requirements (Section 73.207(b)(1) of the Rules) were applicable to the Bralorne and Powell River allotments, the proposed substitute allotment at Bellingham, Channel 281C, would be fully spaced. Under the domestic distance separation table, KAFE operating on Channel 281C as proposed would be required to be 165 kilometers from the first adjacent channel Class A allotment at Powell River and 226 kilometers from the co-channel Class A allotment at Bralorne. The actual distance between the KAFE transmitter site and the Powell River allotment point is 170.6 kilometers; between KAFE transmitter site and the Bralorne allotment site, 234 kilometers. See *Triple Bogey Proposal*, Exhibit A at pp. 13-15.

station located in the proximity of the U.S./Canada border only is entitled to protection with respect to the land area of its own country.⁵ Fourth, the case does *not* involve the implementation of untested or experimental technology.

What this case *does* involve is KAFE's use of an ordinary directional antenna to permit the relocation of KDUX-FM to Shoreline, Washington. That relocation would provide a first local service to Shoreline (2000 Census Population of 53,025) and an additional reception service to nearly 2.4 million people. *See Triple Bogey Proposal, supra*, Exhibit A at pp.5, 24-26. In essence, the question is whether Saga's current unwillingness to use a directional antenna, even though it will not result in the loss of protected coverage (*i.e.*, coverage within the United States), should trump the public interest benefits Triple Bogey's Shoreline proposal entails. It cannot be forgotten that Saga previously was willing to operate KAFE with exactly the same directional antenna to accommodate the proposal to relocate KMCQ to Kent, Washington.⁶ Triple Bogey urges the Commission to further the public interest by modifying KAFE's license to provide the required protection to the Canadian allotments.⁷

Saga and the Joint Petitioners argue that the Commission will be flooded with similar proposals. That is not the case. Very few proposals, if any, would meet the necessary prerequisites:

⁵ *Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels Under the Agreement Between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service ("Working Arrangement")* at Section 5.2.2.4.

⁶ Saga argues that requiring it to employ a directional antenna in this case would force the Commission to "get into the business of resolving disputes over the value of a station's coverage area." Opposition at p. 6. But the coverage area in question is in Canada and thus not protected. Moreover, even assuming that the supposed value of that coverage has any relevance, Saga itself, in its agreement with First Broadcasting, evidently set the price it expected to be paid. Only because Saga and First Broadcasting refused to comply with the *Order to Show Cause* has Triple Bogey been denied the opportunity to respond to the terms of Saga's deal. Saga should not be heard to complain about the difficulty of valuation when its own failure to comply with a Commission directive caused the issue.

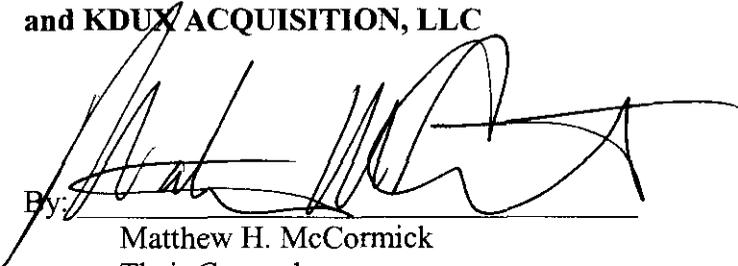
⁷ Of course, Triple Bogey will bear the expense of implementing the change in accordance with the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967).

(a) full spacing to all domestic allotments and (b) no loss of area or coverage within the 60 dBu or 70 dBu contours within the United States.

Saga relies on *Wasilla, Alaska*, 14 FCC Rcd 6263 (Mass Media Bur. 1999). That case involved the rejection of a proposed substitution at Anchorage, Alaska, because it would have required the use of a directional antenna to protect a Homer, Alaska allotment. The case is simply not on point. Triple Bogey does not contest the principle that contour protection methods will not be used at the allotment stage to provide the required spacing vis-à-vis domestic allotments. But it is commonplace to use contour protection methods at the allotment stage with respect to Canadian stations and allotments. See *Working Arrangement*, §§ 3.5.2, 3.6 & 5.2.2.⁸ Saga's desire to protect KAFE's coverage in Canada, which coverage is not subject to protection under the *Working Arrangement*, should not preclude adoption of Triple Bogey's otherwise superior allotment proposal.

WHEREFORE, in light of all circumstances present, Triple Bogey's Application for Review should be GRANTED.

**TRIPLE BOGEY, LLC, MCC RADIO, LLC
and KDUX ACQUISITION, LLC**

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⁸ See also the numerous cases cited on pp. 21-22 of Triple Bogey's Application for Review. Indeed, one of the cases the Joint Petitioners cited in their opposition to Triple Bogey's Application for Review involved employment of treaty provisions to permit an allotment that was short-spaced to a foreign allotment. *Murrieta, California*, 17 FCC Rcd 19458, ¶¶ 2, 14 (Assistant Chief, Audio Div., 2002).

CERTIFICATE OF SERVICE

I, Janice M. Rosnick, do hereby certify that I have on this 22nd day of September, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing
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