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

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Federal Communications Commission
Office of Secretary

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In the Matter of

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

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MB Docket No. 03-57
RM-10565

To: The Secretary, to forward to the Commission

**OPPOSITION TO MOTION FOR LEAVE
TO SUPPLEMENT APPLICATION FOR REVIEW**

Jacor Broadcasting of Colorado, Inc. ("Jacor"), the licensee of KTCL(FM), Wheat Ridge, Colorado, 1/ by its attorneys, hereby submits this Opposition to the Motion for Leave to Supplement Application for Review dated March 2, 2005 (the "Motion"), submitted in this docket by Meadowlark Group, Inc. ("Meadowlark"). 2/

1/ Pursuant to the *Report and Order* in this proceeding, Jacor's license to operate KTCL was modified to specify operation on Channel 227C0 at Wheat Ridge, Colorado, conditioned on submission of a minor change application within 90 days of the effective date. *See Report and Order, Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 18 FCC Rcd 4461 at ¶ 8 (Media Bureau 2003) ("*Report and Order*"). Such minor change application was timely filed. *See* FCC File No. BPH-20040721ALZ.

2/ The FCC's Electronic Comment Filing System does not indicate the date of receipt of the Motion. Whether the Motion was received on March 2, 2005, or thereafter, this Opposition, whether deemed an opposition to a motion or to an application for review, is timely filed. *See* 47 C.F.R. § 1.45(b) (oppositions to motions due 10 days from filing of motion); 47 C.F.R. § 1.4(h) (three additional business days when pleading served by mail); 47 C.F.R. § 1.115(d) (an opposition to an application for review "shall be filed within 15 days after the application for review is filed.").

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Meadowlark has already been told twice, in no uncertain terms, that its Counterproposal in this docket was defective at the time of submission, because it was impermissibly reliant on the reclassification of KRFX(FM), Denver, Colorado, to Class C0 in another proceeding. 3/ Still not getting the message, Meadowlark contends in its Motion that because the KRFX permit application specifying Class C facilities was dismissed in November 2004, 4/ Meadowlark “is now free to simply re-file that Counterproposal.” 5/ So as to not “impose an unnecessary burden on the FCC staff,” Meadowlark asks that its Counterproposal be accepted, processed and granted in this docket. 6/

However, Meadowlark incorrectly reads an invitation to re-submit its Counterproposal *in this docket* in the Bureau’s statement in the *MO&O* that “[i]n the event that the Station KRFX application is denied and the allotment is ultimately reclassified to Class C0 status, Meadowlark or any other interested party may file a proposal previously precluded by Station KRFX as a Class C facility.” 7/ First, and not mentioned by Meadowlark, the dismissal of the KRFX Class C application is the subject of a pending petition for reconsideration and is

3/ *Report and Order*, 18 FCC Rcd 4461 at ¶ 6 (Meadowlark Counterproposal is technically defective), *petition for reconsideration denied, Memorandum Opinion and Order, Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 19 FCC Rcd 15317 at ¶ 5 (Media Bureau 2004) (“*MO&O*”) (reclassification procedure not available to party filing counterproposal, subjecting Meadowlark Counterproposal to dismissal).

4/ *Letter to Marissa G. Repp, Esq.*, DA 04-3554 (rel. Nov. 9, 2004).

5/ *See* Motion at ¶ 4.

6/ *Id.*

7/ *MO&O* at ¶ 6.

thereby still a pending application. 8/ Thus, KRFX has *not* been ultimately reclassified to Class C0 status.

Second, even if Jacor had not petitioned for reconsideration of the November 9, 2004 dismissal of the KRFX Class C application, that action comes too late to help Meadowlark's Counterproposal in this docket, which was required to be technically acceptable on the counterproposal cut-off date. 9/ The Bureau was merely stating the obvious that, if KRFX was ultimately reclassified, any party, Meadowlark or otherwise, could file a new, technically-compliant proposal that had previously been precluded by KRFX's status as a Class C station. But the Bureau did not suggest, nor could it under Commission precedent and directive, 10/ that Meadowlark could turn back the clock of time in this docket and somehow rehabilitate its Counterproposal which was, and will always remain, technically defective when made in May 2003.

8/ See 47 C.F.R. § 1.65(a) (an application is "pending" before the Commission "from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court").

9/ See e.g., *Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13,181 at ¶ 4 (Allocations Br. 1997) (counterproposal is not "technically correct and substantially complete" at the time of filing when short-spaced to licensed site).

10/ *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) ("reclassification [from Class C to Class C0 in an allotment proceeding] may be initiated only through an *original* petition for rule making to amend the FM Table of Allotments, and not through comments or counterproposals.") (emphasis added); 47 C.F.R. § 1.420(g), Note 2 ("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); *Saint Joseph, Clayton, Ruston, and Wisner, Louisiana*, 18 FCC Rcd 22 at ¶13 (Ass't Chief, Audio Div., 2003) (Commission does not accept "rulemaking proposals that are contingent on the licensing of facilities set forth in an outstanding construction permit or are dependent upon final action in another rulemaking proceeding.") (footnotes omitted).

Meadowlark's Motion is founded in the confusion, real or feigned, that its Counterproposal did not need to be technically acceptable when made -- a confusion which infects Meadowlark's other pleadings in this proceeding. Jacor urges the Commission to deny Meadowlark's Motion and to expeditiously deny Meadowlark's Application for Review.

Respectfully submitted,

**JACOR BROADCASTING OF
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March 16, 2005

Certificate of Service

I, Regina Hogan, hereby certify that on this 16th day of March, 2005, a copy of the foregoing **Opposition to the Motion for Leave to Supplement Application for Review** was sent by first-class mail, postage prepaid, to:

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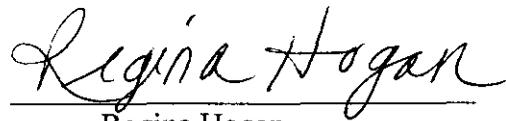
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