

DOCKET FILE COPY DUPLICATE

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MAR 10 2005
FCC - MAILROOM

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of) MB Docket No. 04-215
)
Amendment of Section 73.202(b)) RM-10993
Table of Allotments)
FM Broadcast Stations)
Matagorda, Texas)

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

MOTION FOR CLARIFICATION

Fort Bend Broadcasting Company (hereinafter "Fort Bend"), licensee of radio station KULF(FM) filed a Comments and Counterproposal in this proceeding on August 2, 2004. It has recently been learned from the Commission's ECFS docket file that in addition to the original correct August 2, 2004, "received" stamp as placed upon the Original copy of the pleading in the Secretary's office when it was hand-delivered on that date (as well as upon the Fort Bend's file copy verifying that filing date and stamped at the same time), there are also two other date stamps now appearing on the face of the original filing, one being an internal stamp by the Audio Services Division on August 3, one day after the filing at the Secretary's office, and the second one being another original "received, stamp from the Secretary's office bearing the date of August 6, 2004, 3 days after the pleading had already been internally forwarded to the Audio Services Division from the Secretary's office for processing. See copy of "Original" first page with the original

August 2, 2004 "Received" stamp as well as the two subsequent stamps attached hereto as Exhibit 1)

To the extent that this second Secretary's stamp is physically impossible on its face, we expect it would be disregarded as such. However, in view of the importance of the accurate filing date in this proceeding, Fort Bend herewith will present further facts surrounding the preparation of the filing on August 2, 2004 as well as the actual filing at the Secretary's office on August 2, 2004, and the service of copies of that pleading, also on August 2, 2004, to assure no doubt on the matter.

I. Preparation and Filing of the Comments And Counterproposal as filed with the Commission on August 2, 2004.

Initially, it should be noted that undersigned counsel was personally involved in all aspects of the preparation, filing, and service of these Comments and speaks here from firsthand knowledge.

The Comments were finalized on the morning of August 2, 2004, and then taken to a Kinkos location in Sterling, Virginia to be collated with the Engineering Exhibit and reproduced in the number of copies necessary for the filing and service. This was completed at 1:42 P.M., August 2, 2004 (see exhibit 2) whereupon undersigned counsel drove to the hand-delivery office of the FCC Secretary on Massachusetts Avenue in the District of Columbia, arriving at approximately 2:30 P.M. The entrance bell was rung and the front door unlocked. I walked to the back to the FCC office and thereupon encountered a young man sitting at the FCC

desk. I had never seen this young man in the course of any earlier filings.

I told him I had a filing and he seemed unsure of what I then wanted him to do. I noted that it should be stamped in and that I also wanted my own "file copy" also stamped as proof of the filing having been made. He seemed noticeably unsure of what to do or what stamp to use but finally selected one from a group in front of him with the correct date of August 2, 2004, which read "Received, August 2, 2004, Federal Communications Commission, Bureau/Office". He then stamped the original pleading with this stamp on the upper right side of the page and our service copy, also on the upper right side. (See Exhibit 3)

At about this time a young lady who I believe I did recognize from earlier filings, and who obviously knew what was supposed to be done, entered from my right, and asked the young man what he was doing. I got the very clear impression at that time that the young man may have been just "minding the office" during the young lady's absence, accounting for his lack of familiarity as to what he was supposed to do. Upon inspection of the stamps that he had made, she indicated some problem with his selection of the stamp with the "bureau/office" line instead of the the "Office of Secretary" line. She then proceeded to go right to the stamp that said that, and re-stamped our file copy with that additional stamp, also bearing the correct date of August 2, 2004, leaving us with a file copy bearing two original "received" stamps, one saying Bureau/office by the young man, and

one saying Office of Secretary, by the young woman (see Exhibit 3, copy of our date stamped receipt of filing, verifying the filing on August 2, 2004)

Of some note, while she was stamping our file copy with the correct "Office of Secretary" stamp also bearing the correct date of August 2, 2004, the young man was reaching for another stamp to do the same on the original filing, and seemed determined to correct his own mistake (rather than letting the young lady also re-stamp the "original" document). He located a stamp that seemed right to him and re-stamped the original pleading with it. I believe that is where the confusion came in since the second stamp on the original as placed by the young man reflects it to be the 'Secretary's Office' as the young lady had instructed him but it also bore the incorrect date of "August 6, 2004".

Whether this resulted from his paying more attention to getting the "Secretary's Office" right and assuming the date was O.K. or if he simply made a mistake in reading a "2" and a "6" on the stamp, I believe that this is the most likely explanation for what happened. I also suspect that since the young lady said the first stamp (bureau/ office) was not the right one, that the young man may have then put the line through the original "Received, August 2, 2004, Bureau/Office" stamp that he had first made on the original document, thinking that he had only changed "bureau/office" to "secretary", and not aware that he had also changed the date from August 2 to August 6, four days later.

There again, presuming to put a line through an officially stamped FCC document without some authorization, formal explanation, or formal permission to do so, seems to reflect a complete lack of understanding of the importance and gravity of such an act or of the importance of the dates placed on FCC documents. I note that the young lady did not presume to seek to strike out the first stamp on our file copy when she added the second stamp, and at this point we have to wonder if the young man was even a fully authorized FCC employee. I cannot say for a certainty whether he was or was not, but considering what happened, it seems to be an obvious question. In any case, given the facts as I personally observed them, we submit that the existence of the error by the young man on the second stamping is beyond doubt and that the explanation for the error as set forth above is the most likely explanation of how it happened.

Finally, on this point, note that when the young lady returned and determined that a second "secretary" stamp should be used, she stamped our file copy (correctly) but the young man seemed determined to do the same himself on the original filing and did NOT use the same stamp as the young lady did. Note that the stamp he used (with the incorrect date) says "Office of THE Secretary" instead of "Office of Secretary" (no "THE") as used by the young lady on our file copy. Had the young man allowed the young lady to do both stamps or had he even used the stamper that she had used, there would have been no problem. But he seemed determined to "do it himself" leading, I believe to his erroneous and confusing second stamp. Finally, I note that when our file

copy was handed back to me by the young lady after her second stamp, I did look at it to be sure it was correct, and it was. Unfortunately, I did not have the opportunity to see close up the second stamp by the young man on the original or to note his mistake.

Having completed the filing, I returned to my office in Virginia, prepared the envelopes for the service and delivered the service copies to the Great Falls Post office where they were mailed at 5:49 P.M., August 2, 2004. (See Exhibit 4)

II. Other Considerations Also Conclusively Establishing That the Second "Received" stamp as Placed on the Original Pleading Was Impossible, Contrary to fact, and an Obvious Error.

We believe that the above description of the filing plus the supporting documentary facts clearly and conclusively demonstrate and verify the correct date of the filing as August 2, 2004, most especially as verified, not once but twice, by the FCC's Secretary's office on our date-stamped file copy of the pleading (Exhibit 3). Beyond that however, we have to also note the internal inconsistency of the additional dates that appear on the Original beyond the first and completely correct first stamp of "Received, August 2, 2004".

Reference to the face of the Original document as copied from the FCC web site shows a second imprint, just below the original "Received, August 2, 2004" imprint, but this one is from the Audio Services Division, and shows their internal receipt on August 3, 2004, of the pleading that had been filed with the Secretary's office the day before, on August 2, 2004. This next

day delivery to the branch is totally consistent with the August 2 filing with the Secretary's office and has been noted in several other instances as normal internal procedures. See for example, Exhibit 5 which shows a document filed in another proceeding marked as first received by the FCC on June 25, 2003, and then bearing a secondary stamp as being then subsequently received by the Audio Services Division the next day of June 26, 2003, the same one day "travel time" as in our case.

Of course, this same recognition of receipt of the forwarded pleading by the Audio Services Division on August 3, 2004, renders it absolutely impossible for the second "Received date" of the original pleading dated August 6, 2004 to be anything but wrong. To state the obvious, how could the pleading be forwarded from the Secretary's office and received at the Audio Services Division on August 3, 2004, if it had not even been filed yet and would not be filed for three more days? There is just no doubt that the August 6, 2004, date was a very unfortunate and very bad error that must be totally discounted and ignored.

III. Conclusion: The Facts and Evidence Are Conclusive that the August 2, 2004 Filing Date of the Fort Bend Comments and Counterproposal is True and Correct and Must be Considered as Such.

Such being the case, the ONLY "Received" designation for the original pleading was the original stamp showing "Received, August 2, 2004" and that date must be accepted as accurate and true. It is consistent with the facts as stated herein, it is consistent with our own date-stamped file copy which bears two stamps placed upon the copy by the FCC on August 2, 2004, both

verifying that true filing date, it is consistent with logic and reason, and it is the truth.

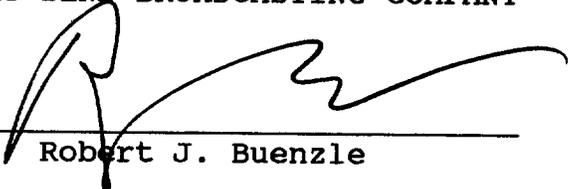
Finally, to the extent that much of the observations and facts discussed above were made or observed by undersigned counsel, it is stated here without reservation, both personally, and as an Officer of the Court, that all such observations and facts as submitted are true and correct, including the unequivocal statement by undersigned counsel that the Fort Bend Comments and Counterproposal as discussed herein were in fact personally hand-delivered and filed by undersigned counsel with the FCC at its office on Massachusetts Avenue in the District of Columbia at approximately 2:30 P.M. on August 2, 2004.

Wherefore, it is respectfully requested that the Commission take note of these additional facts recognizing the Fort Bend filing on August 2, 2004, and that it continue in its processing of the Fort Bend Comments and Counterproposal in this proceeding.

Respectfully submitted,

FORT BEND BROADCASTING COMPANY

by



Robert J. Buenzle

Its Counsel

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(703) 430-6751

March 10, 2005

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Matagorda, Texas

) MB Docket No. 04-215
)
) RM-10993
)
)
)

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

RECEIVED - FCC
AUG - 4 2004
Federal Communication Commission
Bureau / Office

RECEIVED

AUG - 6 2004

COMMENTS AND COUNTERPROPOSAL

Federal Communications Commission
Office of the Secretary

2004 AUG - 3 P 2:15

Respectfully submitted,

FORT BEND BROADCASTING COMPANY

by Robert J. Buenzle
Its Counsel

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August 2, 2004

EXHIBIT
1

No. of Copies rec'd
List ABCDE

044



August 02, 2004 13:42 Page: 1
Receipt #: 161974
MasterCard #: XXXXXXXXXXXX
2004/08/02 13:02

**EXHIBIT
2**

Qty	Description	Amount
5	ES B&W S/S White 8.5 x	0.45
392	ES B&W S/S White 8.5 x	35.28
392	Spoiled: ES B&W S/S Wh	-35.28
658	ES B&W S/S White 8.5 x	59.22
SubTotal:		59.67
Taxes:		2.69
Total:		62.36

The Cardholder agrees to pay the Issuer of the charge card in accordance with the agreement between the Issuer and the Cardholder.

47100 Community Plaz 703-421-4600
Sterling, VA 20164
www.fedexkinkos.com
Please recycle this receipt.

RECEIVED

AUG - 2 2004

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Federal Communications Commission
Office of Secretary

In the Matter of)	MB Docket No. 04-215
)	
Amendment of Section 73.202(b))	RM-10993
Table of Allotments)	
FM Broadcast Stations)	
Matagorda, Texas)	

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

*FILE
COPY*

COMMENTS AND COUNTERPROPOSAL

RECEIVED - FCC

AUG - 2 2004

Federal Communication Commission
Bureau / Office

Respectfully submitted,

FORT BEND BROADCASTING COMPANY

by Robert J. Buenzle
Its Counsel

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August 2, 2004

*EXHIBIT
3*

ANOTHER EXAMPLE

IF
DOUBLE
STAMP

RECEIVED & INSPECTED
JUN 25 2003
FCC - MAILROOM

RECEIVED
JUN 26 2 39 PM '03

ADDED STAMP

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

File
copy

In re Application of)
Pacific Broadcasting)
Of Missouri LLC)
For Special Temporary)
Authorization to Operate Station)
KTKY(FM), Refugio, Texas)
To: The Commission

File No. BSTA-20010216ABP
File No. BSTA-20010323ACD
Facility ID No. 40798

Please
Date-Stamp
and Return
RECEIVED
JUN 25 3 15 PM '03
COMMUNICATIONS SERVICES

**JOINT MOTION FOR LEAVE TO FILE
JOINT MOTION FOR EXPEDITED COMMISSION ACTION
AND STAY OF FURTHER STAFF ACTION**

On February 11, 2003, the Commission released a Memorandum Opinion and Order in this case (FCC 03-18) which, inter alia, changed an existing policy relating to the use of "backfill channels" in FM rulemaking proceedings and, in effect, deleting the acceptability of such a procedure. In response to the Commission action a Joint Petition for Reconsideration and Clarification was filed on March 13, 2003 by New Ulm Broadcasting Company (petitioner in MB Docket 02-248); Garwood Broadcasting Company of Texas (Petitioner in MB Docket 99-331); and Roy E. Henderson (Petitioner in MB Docket 02-177), referred to therein and here either individually, or collectively as "the Joint Petitioners"

EXHIBIT
5

In its Petition, it was pointed out that if the Commission's new policy were interpreted in the most drastic and Draconian way, as a complete prohibition of the use of backfill channels under any circumstance, and also applying on a retroactive, ex

GREAT FALLS POST OFFICE
 GREAT FALLS, Virginia
 220669998
 5165430180-0096
 (800)275-8777 05:49:34 PM

EXHIBIT
 4

Sales Receipt			
Product Description	Sale Qty	Unit Price	Final Price
WASHINGTON DC 20554 Priority Mail			\$3.85
	Issue PVI:		\$3.85
BAY CITY TX 77404 Priority Mail			\$3.85
	Issue PVI:		\$3.85
AUSTIN TX 78745 Priority Mail			\$3.85
	Issue PVI:		\$3.85
TULSA OK 74129 Priority Mail			\$3.85
	Issue PVI:		\$3.85
ATLANTA GA 30305 Priority Mail			\$3.85
	Issue PVI:		\$3.85
Total:			\$19.25
Paid by: MasterCard			\$19.25
Account #	XXXXXXXXXXXX	Exp.	04/07
Approval #:			045945
Transaction #:	23 903320497		802

Bill#: 1000401668016
 Clerk: 04

— All sales final on stamps and postage. —
 Refunds for guaranteed services only.
 Thank you for your business.
 Customer Copy

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Motion For Clarification have been served by United States mail, postage prepaid this 10th day of March, 2005, upon the following:

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Matagorda Petitioner

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Austin, Texas 78745-5460

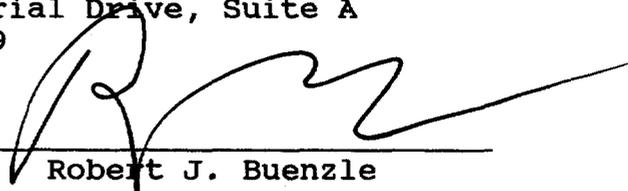
LaGrange Broadcasting Corporation
1110 West William Cannon Drive
Suite 402
Austin, Texas 78745-5460

Roy E. Henderson
1110 West William Cannon Drive
Suite 402
Austin, Texas 78745-5460

Fort Bend Broadcasting Company
1110 West William Cannon Drive
Suite 402
Austin, Texas 78745-5460

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Radio Station KQXY(FM)
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Building 14, 14th Floor
Atlanta, GA 30305

Capstar TX Limited Partnership
Radio Station KMY(FM)
2625 South Memorial Drive, Suite A
Tulsa, OK 74129



Robert J. Buenzle

* Also served by Fax