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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,) MM Docket No. 05-112
FM Broadcast Stations) RM-11185
(FREDERICKSBURG, TEXAS))

To: The Office of the Secretary,
for the Attention of the Assistant Chief, Audio Division, Media Bureau

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JUN 28 2005

Federal Communications Commission
Office of Secretary

OPPOSITION TO MOTION TO ACCEPT SUPPLEMENT

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SUMMARY

Munbilla Broadcasting Properties, Ltd. (*MPBL*), herein opposes the Motion to Accept Supplement jointly filed by Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, L.P., and Capstar TX Limited Partnership (collectively, *CC/R*)), whereby *CC/R* seek to file a curative Supplement to their fatally flawed Counterproposal in this proceeding (MB Docket No. 05-112). *CC/R*'s Motion is part of a belated effort to fix a fatally defective Counterproposal. The Supplement for which the Motion seeks acceptance tries to eliminate a short spacing to a granted Construction Permit that would have been readily apparent to *CC/R* if it had only checked. Instead, *CC/R* employed an Engineering Statement and channel studies nearly a year old and treated the Permit as a pending application. But even as a pending application, the specified facility had been long since cut off and protected from short-spaced proposals, including rule-making petitions and Counterproposals. *CC/R* did not even attempt to obtain a statement from *MBPL* to the effect that *MBPL* would modify its Construction Permit and the already-constructed and operating facility to accommodate the Counterproposal.

CC/R now try to eliminate the short spacing by modifying the reference point that they themselves proposed for a substitute channel at Llano, Texas. The FCC wisely limits such technical amendments to situations in which there are "unforeseen circumstances." There are absolutely no unforeseen circumstances here.... none whatsoever. *CC/R* had actual knowledge that the application was pending, and *CC/R* had at least constructive knowledge of both the application's grant and the relevant protection requirements, both before and after grant.

Indeed, counsel to one member of the CC/R, acting on behalf of another client in another proceeding, described the practice of reliance on contemporaneous channel studies, and argued for dismissal of a defective Counterproposal for failure to protect cut-off proposals.

Given that there were no unforeseen circumstances, the proffered amendment must be rejected, and the Motion denied. Any other course of action would cause unfair prejudice to other parties, including MBPL, and would wreak havoc with the orderly processing of FM Allotment proposals. The FCC must therefore summarily deny the Motion.

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Munbilla Broadcasting Properties, Ltd. (*MPBL*), by its communications counsel, hereby opposes the Motion to Accept Supplement jointly filed by Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, L.P., and Capstar TX Limited Partnership (collectively, *CC/R*), whereby *CC/R* seek to file a curative Supplement to their fatally flawed Counterproposal in this proceeding.

I. BACKGROUND

1. On November 16, 2004, Katherine Pyeatt filed a Petition for Rule Making seeking the allotment of Channel 256C3 to the community of Fredericksburg, Texas. On March 18, 2005, the Media Bureau issued the Notice of Proposed Rule Making in the instant proceeding, 20 FCC Rcd 6009, 70 Fed. Reg. 17044 (2005) (the *NPRM*). The NPRM proposed to allot Channel 256C3 to Fredericksburg, as Ms. Pyeatt had requested. However, due to conflicts with other proposals that the FCC had already rejected, but whose rejections were not yet final, the NPRM

cautioned interested parties that, pursuant to Auburn, Alabama, et al., 18 FCC Rcd 10333 (MB 2003), the FCC would only allot the channel subject to those other proceedings' outcomes.¹

2. On May 9, 2005 (the NPRM's Comment deadline), CC/R filed a multielement Counterproposal. CC/R described their Counterproposal in this (Fredericksburg) proceeding as "... the *same* counterproposal as their counterproposal in Docket 00-148 [emphasis in original]."

3. On May 24, the Reply Comment deadline, MBPL filed Reply Comments in this proceeding. MBPL showed that CC/R's Counterproposal was both fatally defective and unacceptable for rule making because one element of the Counterproposal impermissibly short-spaced a valid and duly issued Construction Permit held by MBPL.

4. CC/R's Counterproposal, as filed, stated that one of its elements conflicted with what that Counterproposal described as "[t]he Burnet Application." At Paragraph 51 of CC/R's Counterproposal, CC/R represented to the Commission as follows:

51. The Burnet application, File No. BPH-20030902ADU, does not protect [CC/R's Counter]proposal, and thus is contingent upon action in this proceeding. The Commission has not yet granted the application, and is holding the application in its pending queue. The application could be combined and considered as a counterproposal in this proceeding.

5. CC/R included in its Counterproposal an Engineering Statement nearly one year old (dated June 21, 2004). The Engineering Statement purported to establish the Counterproposal's technical merit. Like the Counterproposal itself, the Engineering Statement referred to BPH-20030902ADU as a pending application.

¹Among the conflicts to which the NPRM referred is a short spacing to one element of CC/R's rejected, multielement Counterproposal in MM Docket No. 00-148, Quanah, Texas, et al., 18 FCC Rcd 9495 (MB 2003).

6. On June 21, 2004, the day that CC/R's consulting engineer completed and dated his Engineering Statement, FCC File No. BPH-20030902ADU was indeed a pending FCC Form 301 application. However, on that day, the application had already been cut off for nine months, and this Fredericksburg docket was no more than a gleam in Katherine Pyeatt's eye — if even that.² Eight days later, the FCC routinely granted MBPL's application, partly because it fully complied with the FCC's rules and processing policies, and partly because no one (including CC/R) had filed a pre-grant protest. The Commission announced the grant on July 1, 2004. See Broadcast Actions, Report No. 457688. No one contested the grant. Consistent with the relevant provisions of the Communications Act and Part 1 of the Rules, the grant became final, in the ordinary course, at the close of Commission business on August 10, 2004.

7. A portion of MBPL's application, Exhibit B-16 to the Engineering Statement of Hatfield & Dawson Consulting Engineers, MBPL's consulting engineers, included the following recitation:

The attached spacing study shows that the proposed operation meets the co-channel and adjacent channel spacing requirements for Class A stations as prescribed in §73.207 of the Commission's Rules, with two exceptions[, one of which is not relevant here]:

* * * *

Proposed Llano Channel 297A

The proposed operation of KHLB-FM is 3 km short-spaced to the proposed substitution of Channel 297A for Channel 242A at Llano, Texas. The Llano substitution is part of a [C]ounterproposal (RM-10198) that the Commission dismissed by the Report and Order in MM Docket No. 00-148.³ That dismissal became effective on the

²Ms. Pyeatt did not file her Petition for Rule Making until November 16, 2004. The *NPRM* did not issue until March 18, 2005.

³Counterproposal RM-10198 is the CC/R Counterproposal in MM Docket No. 00-148.

release date (May 8, 2003), and is the subject of a Petition for Partial Reconsideration and Request for Expedited Action filed on June 16, 2003.

As is more-comprehensively addressed in the legal section of this application, the instant application is filed pursuant to the policy set forth in Paragraphs 22-24 of *Auburn, et al, Alabama*, 18 FCC Rcd 1033 (2003), which states that FM proposals are not required to protect proposed allotments which have been dismissed, notwithstanding that the dismissal is the subject of a pending administrative appeal.

Therefore, for the purposes of this application[,] it is presumed that the Llano Channel 297A [proposal] has been dismissed.

8. When the Commission routinely granted MBPL its Construction Permit, it appended Special Operating Condition No. 7, which reads as follows:

The grant of this permit is conditioned on the final outcome of MM Docket 00-148. The final outcome of that proceeding may require KHLB to change frequency, class, or site location. Accordingly, any construction undertaken pursuant to this permit is at the permittee's sole risk. See Meridian Communications, 2 FCC Rcd 5904 (Rev. Bd. 1987).

MBPL willingly accepted the Construction Permit with that condition. MBPL did so because MBPL, when filing its application, had indicated a willingness to accept such a condition.

9. Prior to filing, MBPL had evaluated the likelihood that the FCC would reverse the rejection of CC/R's Counterproposal in the Quanah proceeding. After reviewing the merits, MBPL concluded that the likelihood was nil that the FCC would reinstate CC/R's Counterproposal in the Quanah proceeding. MBPL was thus comfortable with the idea of bearing the infinitesimal risk that the FCC might ultimately reinstate CC/R's Counterproposal in MM Docket No. 00-148, which in turn would force an appropriate response by MBPL... modification of the Construction Permit and of the authorized facility, or — in the worst case — surrender of the Construction Permit and dismantling of the facility.

10. After receiving the grant, MBPL purchased the required directional antenna, constructed the authorized facility, and applied for a license to cover the Construction Permit. See FCC Form 302-FM, File No. BLH-20050307ABE. By Public Notice of March 10, 2005, the Commission announced that it had accepted the license application for filing. See Broadcast Applications, Report No. 25938. By letter of April 18, 2005, the FCC staff granted full-power Program Test Authority for the facility. The facility is currently operating pursuant to that grant of Program Test Authority.

11. CC/R filing of its Counterproposal in this proceeding came *nine months after* the grant of MBPL's Construction Permit had become final. The Engineering Statement, *prepared more than ten months earlier*, that CC/R supplied demonstrated that the proposed channel substitution at Llano — a necessary component of the Counterproposal— short-spaced the BPH-20030902ADU site. However, as noted above, the Counterproposal bizarrely and falsely described BPH-20030902ADU as a mere pending application, and treated it as if it were not entitled to any protection whatsoever. The Counterproposal stated that the “Burnet Application” could be treated as a Counterproposal to CC/R's own Counterproposal.⁴ *But the truth was that the Commission had granted BPH-20030902ADU almost 11 months earlier, the grant had been a matter of public record for more than ten months, and even if still a pending application, BPH-20030902ADU would have been entitled to full cut-off protection.*

12. Even though CC/R *did not* serve MBPL or its counsel with its Counterproposal, MBPL nonetheless became aware both of the filing and of the posture that CC/R had taken. The exigent circumstances compelled MBPL to act to protect both the CP itself and the physical

⁴On simple § 307(b) grounds, such treatment would be the Kiss of Death.

facility that MBPL had already built in reliance upon that authorization. Undersigned counsel attempted to initiate a substantive dialogue with respective counsel to CC/R, to no avail.

13. So, with no other recourse, MBPL prepared and timely filed Reply Comments. Therein, MBPL showed that, by virtue of the short spacing to MBPL's Construction Permit, CC/R's Counterproposal in this Fredericksburg Docket was fatally flawed, unacceptable for rule making, and suitable only for summary rejection. MBPL clearly showed that, as a granted Construction Permit, BPH-20030902ADU is obviously and incontestably entitled to *full statutory protection from all proposals other than the Counterproposal in MM Docket 00-148*. That includes full protection from CC/R's Counterproposal in this MB Docket No. 05-112.⁵

14. CC/R now ask the FCC to accept and to consider a Supplement in which CC/R argue that CP BPH-20030902ADU is not entitled to protection from CC/R's Counterproposal in this Docket. The proffered Supplement also tries to remedy the fatal short-spacing and lack of consent by proposing an alternative reference point for the proposed Llano substitute channel. MBPL will address the (lack of) merits of the Supplement itself in a separate pleading. In this Opposition, MBPL will address the (lack of) merits of CC/R's Motion to Accept Supplement.

II. ARGUMENT THE COMMISSION MUST DENY CC/R'S MOTION

15. CC/R assert that:

The Commission may accept th[e proffered S]upplement as a matter within its discretion. Winslow et al., Arizona, 15 FCC Rcd 9155 (2000); and Oakville et al.

⁵Indeed, even if the grant had not yet occurred, as an accepted application with full cut-off rights, BPH-20030902ADU would still have been entitled to full protection from CC/R's assault. Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917, 4919 (1992), recons. granted in part, 8 FCC Rcd 4743 (1993).

Washington, 17 FCC Rcd 997 [(2002)]. Indeed, it is the Commission's policy to avoid such conflicts when possible through alternate transmitter sites. See Pauls Valley, Oklahoma et al., 13 FCC Rcd 13456 at ¶ 8 (1998). Accordingly, the Commission may accept this supplement as a matter which it could have considered on its own motion. See Benavides, Bruni and Rio Grande City, Texas, 13 FCC Rcd 2096 (1998)."

Motion to Accept Supplement at p. 1.

16. CC/R's Motion cannot carry the day. The various authorities its cites either do not stand for the propositions for which CC/R cites them, or actually undercut CC/R's position, or arose in such completely different circumstances as to be irrelevant here, or two or more of the foregoing. CC/R's Motion is an obvious attempt to slip on patches to plug two gaping holes in CC/R's Counterproposal — its utter failure either to protect MBPL's Construction Permit, and its failure to include a statement from MBPL consenting to modify or surrender the Permit to accommodate CC/R's Counterproposal in this Fredericksburg Docket.

17. For the Commission to accept the Supplement and to change the reference point of CC/R's proposed Channel 297A at Llano would vitiate the bedrock requirements that Counterproposals must be technically correct and substantially complete by the deadline for Comments in the relevant docket, and that if a Counterproposal will short-space an authorized facility or cut-off application, the Counterproposal must include a statement of willingness to accommodate from the affected licensee, permittee, or applicant.

It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420 (d) of the Commission's Rules, Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 (1988), and Springdale Arkansas et al., 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990).

Parker, Arizona, 17 FCC Rcd 9578 (2002); and

[C]lear consent to... changes [to KHLB's authorized facility] had to be provided at the deadline for filing counterproposals or [the] counterproposal would not be technically correct or substantially complete. See Llano and Marble Falls, Texas, 12 FCC Rcd 6809, 6810 note 3 (1997) and Claremore, Oklahoma et al., 3 FCC Rcd 4037 (1988). Thus, failure to demonstrate such consent by [Station KHLB] renders [the] counterproposal unacceptable for consideration."

Id.

18. For the FCC to accept CC/R's Supplement, and to thereby allow CC/R's thirteenth-hour effort to clean up its Counterproposal to succeed, would wreak havoc upon the regime under which the Agency has processed FM allotment proposals for decades. It would deal a kidney punch to administrative efficiency. It would blow the firmly established policies and precedent quoted above to smithereens. *Every* Counterproponent from here on in who tenders a defective Counterproposal would justifiably claim entitlement to clean up its act after the fact, because the FCC let CC/R do it, and because the FCC must treat similarly situated parties similarly (or provide a rational explanation for disparate treatment). Melody Music, Inc. v. FCC, 345 F.2d 730, 7623 (D.C. Cir. 1964).

19. The Commission has been quite clear about the extremely limited circumstances under which it allows curative amendments to defective Counterproposals. "[A]mendments to counterproposals are impermissible unless an 'unforeseen circumstance' [has] occurred." Milford, Utah, 19 FCC Rcd 10335 (MB, 2004). See also, Amboy, California, 19 FCC Rcd 12405 (MB, 2004). Here, just as in Milford and just as in Amboy, no unforeseen circumstance has occurred — *absolutely none whatsoever*.

20. The FCC accepted MBPL's site-change application for station KHLB on September 3, 2003, the day after MBPL had filed it. Public notice of the application's acceptance duly

appeared five days after that. See Broadcast Applications, Report No. 25565 (rel. September 8, 2003). Moreover, the application also appeared in the FCC's FM Engineering Data Base shortly after its filing. The application was entitled to cut-off protection as of the date it was filed. And because no one — including CC/R — filed a pre-grant protest, and because the application fully comported with the Commission's technical rules and application-processing policies, the FCC routinely granted the application several months after MBPL filed it — just as one would expect. The FCC then promptly and routinely updated the FM Engineering Data Base and the CDBS system to reflect the grant. Public notice of the grant duly appeared on July 1, 2004, two days after the grant occurred. See Broadcast Actions, Report No. 45768. Public notice of MBPL's application for a license to cover the granted Construction Permit duly issued shortly after the application's filing — two months before CC/R filed its Counterproposal in this Fredericksburg docket. See Broadcast Applications, Report No. 25938 (rel. March 10, 2005).

21. As the Commission noted in Amboy, *supra*, at paras. 9-10:

9. In allocation proceedings, both counterproposals and initial rulemaking proposals are deemed defective if they are in conflict with, or contingent upon, a cut-off proposal or a non-final decision in another pending proceeding. This policy not only affords protection to parties entitled to cut-off protection, it also is essential to the efficient processing of proposed changes to the Table of Allotments. Processing proposals that are not capable of being effectuated on the date of filing would cause an unnecessary expenditure of Commission resources and would impose an unfair burden on other parties. For that reason, counterproposals, which are subject to comment deadlines, must be correct and complete when filed, and we have rejected curative amendments to counterproposals when the amendments were filed after the comment deadline.

10. Cameron's counterproposal here must be dismissed because it was not correct, complete, and capable of being effectuated on the date of filing, due to conflict with cut-off proposals in another proceeding [(MB Docket No. 01-135).... T]he counterproposals in that proceeding were protected from subsequent conflicting allotment proposals. In these circumstances, Cameron's counterproposal in this

proceeding was not capable of being effectuated when filed. For that reason, we shall dismiss Cameron's counterproposal, and we need not reach other issues raised by the counterproposal.

[Footnotes omitted.]

22. Counsel to Rawhide (the R in CC/R) is intimately familiar with this hornbook tenet of FM Allocations jurisprudence. Indeed, counsel to Rawhide, on behalf of another client, ably argued in the Amboy proceeding that the FCC had to dismiss Cameron's Counterproposal due to short-spacing. See Reply Comments of Marathon Media Group in MB Docket No. 02-124, filed July 30, 2002. And no doubt, counsel to the Clear Channel entities (the CC in CC/R), also being an able and experienced FCC practitioner, is equally familiar with this bedrock principle.

23. CC/R had constructive notice of the grant of BPH-20030902ADU ten days after the completion of its Counterproposal's Engineering Statement and ten months before its lodging. CC/R could have easily verified — at any time during the ensuing ten months — that the Commission had granted Construction Permit BPH-20030902ADU. CC/R could have, at any time during that nearly year-long period, done exactly what it is now belatedly trying to do — to adjust its reference coordinates for Channel 297A at Llano, to protect MBPL's CP.

24. CC/R's attempt has come a month and a half late, and CC/R's Counterproposal is three kilometers short. CC/R is trying to fix readily foreseeable defects six weeks after the Comment deadline, and only after the circumstances forced MBPL to point the defects out.

25. CC/R's reliance on a nearly year-old spacing study and its pretension that BPH-20030902ADU was pending application (and one not even entitled to protection) are both unexplained and extremely disturbing. On the first point, counsel to Rawhide, representing Marathon in the Amboy proceeding, stated that, "Marathon, like other parties, relies on its

contemporaneously conducted channel studies...” to determine what conflicts may exist before lodging an FM Allotment proposal. See Reply to Opposition of Marathon Media Group, LLC in MB Docket No. 02-124, filed December 10, 2002. So obviously, counsel’s practice is to rely on “contemporaneously conducted spacing studies,” not ones nearly a year old. On the second point, the claim that, even if it were only a pending application, BPH-20030902ADU would not be entitled to protection flies in the face of the black-letter law of Conflicts Between Applications and Petitions for Rule Making, supra.

26. Grant of CC/R’s Motion would unfairly prejudice other parties, including: Ms. Pyeatt, the Fredericksburg petitioner; and MBPL itself, which has filed a Goldthwaite Counterproposal in the Llano proceeding (MB Docket No. 05-151), and the people of Fredericksburg and Goldthwaite. Prejudice to Ms. Pyeatt and to MBPL would result because, if the FCC were to allow CC/R to patch the flaw in its Fredericksburg Counterproposal, the FCC might well collapse the Llano Docket into this Fredericksburg Docket, and then reject both Ms. Pyeatt’s and Ms. Crawford’s Petition on § 307(b) grounds, and finally reject MBPL’s Goldthwaite filing as an untimely Counterproposal to CC/R’s Fredericksburg Counterproposal. See, e.g., Saratoga et al., Wyoming, 15 FCC Rcd 10054 (2000). Prejudice to the residents of Fredericksburg and Goldthwaite would occur because those worthy communities would be deprived of local services to which they each would otherwise be entitled.

27. The precedent that CC/R’s Motion cites is either readily distinguishable, or actually speaks against acceptance of CC/R’s Supplement. In Winslow, the FCC accepted a supplement that addressed the issue of how the Petitioner had to protect a Yuma station. Years before, Yuma had pursued, and then apparently abandoned, an upgrade effort. After initially opposing the

Petitioner's proposal, the Yuma station withdrew its objection and decided to downgrade.

Counsel to the Petitioner (coincidentally, counsel to Rawhide here) asserted:

... Petitioner could not have submitted [its] Supplement at an earlier stage in the proceeding because the Class C allotment at Yuma restricted the ability to move closer to Sun City West. Petitioner argued that the Commission should not have protected the vacant Class C allotment for nine years. Now[,] due to the licensee's withdrawal of its interest in a Class C station, the Commission does not need to rule on whether to continue to protect the Class C allotment.

Supplement to "Comments and Counterproposal" in MM Docket No. 99-246, filed by Desert West Air Ranchers Corporation, December 23, 1999.⁶ Here, CC/R can make *no such* representation. MBPL did *not* abandon and *never once* slacked off in its station-improvement effort. From the very day that MBPL filed application BPH-20030902ADYU through the date of grant, MBPL vigorously prosecuted that application. Upon grant of the resulting Construction Permit, MBPL timely constructed the authorized facility, placed the authorized facility into broadcast service, and applied for a license to cover the authorized facility.

28. In Pauls Valley, an application filed to implement a community change adopted in another proceeding (Tatum) turned out to be short-spaced to a Counterproposal (Overton) to the Pauls Valley rule making. The Tatum application was filed after the Pauls Valley Comment deadline. The Bureau stated:

Although the Tatum application was filed after the [Overton] counterproposal herein and thus not entitled to protection against the Overton proposal, it is the Commission's policy to accommodate pending applications whenever possible. In this case, we have identified a non-conflicting transmitter site for the Overton allotment, which according to the staff engineering study, will enable the Overton station to [improve facilities]. Therefore, we believe the public interest would be service by altering the reference coordinates from that proposed in the counterproposal for the Overton allotment.

⁶And notwithstanding acceptance of the Supplement, the Commission required protection of the Class C Yuma allotment and denied the Petitioner's preferred alternative.

Id. at para. 8.

29. That was a completely different situation from what we have here. CC/R's Fredericksburg Counterproposal is not only *not* an application, it is also *not* an application to implement a city-of-license change. The Tatum application was *not* short-spaced to a granted Construction Permit, and it was *not* defective *ab initio*. The Overton Counterproposal itself was substantially complete and technically acceptable on the deadline for Counterproposals in the Pauls Valley proceeding.

30. The Bureau adjusted the Counterproposal reference point to accommodate the *later-filed Tatum application*, in accordance with preexisting policy. Here, by contrast, filing, cut-off, and grant of MBPL's application predated CC/R's Counterproposal by up to twenty months. The preexisting policy mandates the Counterproposal's *dismissal*, not the allowing of CC/R to belatedly amend it to rectify a clearly foreseeable defect (its failure to protect MBPL's CP). As a result, CC/R's Counterproposal was Dead On Arrival for failure to protect MBPL's granted CP. No amount of tweaking or cajoling can summon it, Lazarus-like, from the tomb.

31. In Benavides, a Counterproponent requested and obtained leave to file a supplement to its Counterproposal to provide further engineering data supporting its claim that upgrading its Rio Grande City station would eliminate white or grey area. The Bureau granted leave because the proffered data was of the type the FCC staff itself would have generated and studies on its own motion. Id. at n. 4. The data in question had *nothing* to do with an attempted fix to a blatantly defective original Counterproposal. Benavides, therefore, provides absolutely no lubrication for the too-late effort by CC/R to patch fatal flaws in its Counterproposal. Indeed, ironically, in Benavides, another Counterproponent tried to supplement what it termed its

“Counterproposal” after the deadline for Comments. The Commission did not consider the proffered information and decided the case on other grounds. Id. at n. 2.

32. CC/R cannot be allowed to circumvent the clear, long-standing requirement that a Counterproposal must be technically acceptable as of the deadline for Counterproposals in the relevant rule-making proceeding. CC’s Counterproposal in this proceeding — the Fredericksburg docket — was fatally defective as of that critical deadline. That is the end of the story.

Otherwise, the threat to the FCC’s administrative efficiency and scarce processing resources are simply far too great. Other Counterproponents who toss in half-baked, blatantly, or even latently defective filings would surely take note. They would whistle the Melody Music tune, and demand similar kid-gloves treatment. The FCC could not deny them their free passes.

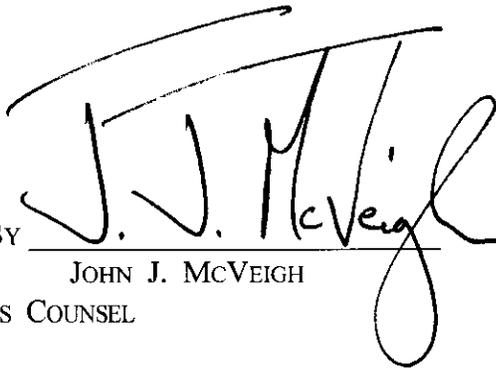
33. What CC/R has presented the FCC with here is a run-of-the-mill situation in which a party has tossed in a defective Counterproposal on the relevant filing deadline, and then belatedly tried to fix its flaws. The Agency — rightly, and many times before — has handled this situation by disallowing the belated attempt to patch the hole in the defective Counterproposal. The same result must obtain here. The FCC must deny CC/R’s Motion to Accept Supplement.

III. CONCLUSION

34. For the above reasons, the Commission's staff must promptly deny CC/R's Motion to Accept Supplement.

Respectfully submitted,

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DATE: JUNE 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have, this Twenty-eighth day of June, 2005, sent copies of the foregoing **OPPOSITION TO MOTION TO ACCEPT SUPPLEMENT** by first-class United States mail, postage prepaid, to:

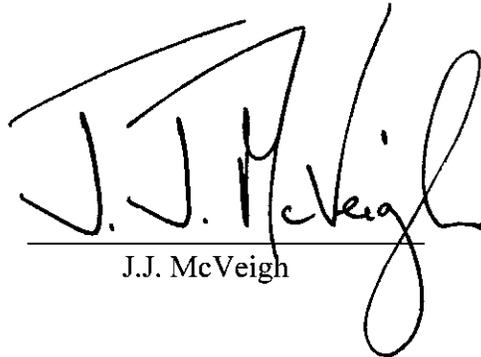
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