

Before the  
**Federal Communications Commission**  
Washington, DC 20554

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In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Elberton and Union Point, Georgia) )

Federal Communications Commission  
Office of Secretary

MB Docket No. 05-191  
RM-11243

To: **Office of the Secretary**

DOCKET FILE COPY ORIGINAL

Directed To: **Assistant Division Chief, Audio Division  
Media Bureau**

**REPLY COMMENTS**

Georgia-Carolina Radiocasting Company, LLC ("GCR"), by its attorney, hereby submits its reply comments in response to the "Comments of Frank G. McCoy" ("Comments") filed by Frank G. McCoy ("McCoy") in this proceeding. With respect thereto, the following is stated:

McCoy's claim, that GCR cannot be "relied upon" to carry out its proposal (Comments at 4), is uninformed, and wrong. McCoy's proposition is based upon events in MM Docket No. 99-343, involving a change of city of license filed by Radio Elberton, Inc. from Elberton to Lavonia. In that proceeding, Station WWRK-FM (currently WSGC-FM) was authorized to change its community of license. McCoy's premise is that because (1) Radio Elberton and GCR each are controlled by Douglas M. Sutton, Jr., and (2) Radio Elberton did not immediately effectuate the Lavonia change of community of license, Radio Elberton "warehoused" a frequency for "more than four years" (Comments at 4), Radio Elberton "effectively committed a fraud on the Commission" (Comments at 4), and that "Mr. Sutton" cannot be "relied upon to promptly effectuate

any decision in his favor in this proceeding.” Comments at 5.

There are a number of factual matters omitted or misstated by Radio Elberton, Inc., however in its pleading. First and foremost, at the time MM Docket No. 99-343 was initiated and granted by the Commission, Douglas M. Sutton, Jr. was not in control of the licensee of WSGC-FM, “Radio Elberton, Inc.” At the time the rulemaking request was filed and granted, Radio Elberton, Inc. was controlled by Mickey Palmer, a person no longer involved with Radio Elberton, Inc. Douglas M. Sutton, Jr. did not become controlling stockholder of Radio Elberton, Inc. until April 26, 2001 (File No. BTCH-20010212ABL), nearly a year after the Lavonia proceeding was completed. Therefore, contrary to McCoy’s premise, the failure of Radio Elberton, Inc. initially to file a minor change application has *nothing* to do with either Douglas M. Sutton, generally, or GCR in particular.

Secondly, filing of the application could not occur earlier due to the ongoing conflict that existed with respect to File No. BPED-19990630MB. The Lavonia proposal was for Channel 221A. That non-commercial application proposed a new non-commercial station on Channel 220A. Therefore, the two proposals were mutually-exclusive. Although the *Report and Order* favored the Lavonia move, the conflicting Pendergrass non-commercial construction permit application improperly remained pending for over four years, until December 6, 2004. It was believed that the Lavonia application could not be validly filed until the Pendergrass application literally was dismissed, since such a Lavonia application would otherwise be defectively short-spaced with the earlier-filed/still-pending Pendergrass application. Radio Elberton periodically monitored that application’s status, awaiting its dismissal, so that its FCC Form 301 for

minor change thereafter could be properly filed and processed. To compel Commission action on the Pedergrass application, Radio Elberton finally filed its FCC Form 301 on September 1, 2004 (File No. BPH-20040901ADN), and the FCC finally dismissed the conflicting Pendergrass application on December 5, 2004. The Radio Elberton FCC Form 301 for the WSGC-FM move to Lavonia subsequently was granted on February 22, 2005. Under the terms of the issued permit, construction and the move of Station WSGC-FM must occur prior to February 22, 2008. Until that time, under Commission precedent, WSGC-FM is permitted to continue to operate from its current location, and to serve its present community of license, under an "implied STA." *See 1998 Biennial Regulatory Review, Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd 17525, 17540 n.55 (1999); *Dos Palos, Chualar and Big Sur, CA*, 19 FCC Rcd 1826, ¶ 19 (MB, Audio Division 2004) ("[d]uring the construction permit period, the licensee may continue to operate the previously authorized facilities on an interim or 'implied Special Temporary Authority' basis"). Thus, there is nothing questionable or improper about WSGC-FM's current operating status, and there was nothing improper or questionable about the delay in the Lavonia filing. Moreover, the Lavonia city change is indeed being effectuated, in accordance with and as required by Commission orders and policies.

Conversely, even a cursory review of the Commission's records belies McCoy's claims that GCR (or "Sutton") cannot be "relied upon" to effectuate city of license changes. In MM Docket No. 99-313, Sutton Radiocasting Corporation (controlled by Douglas M. Sutton, Jr.) was granted consent from the Commission to reallocate Station WCRS-FM (currently WBZT-FM), Channel 244A, from Greenwood to Maudlin, South

Carolina. *Greenwood and Maudlin, SC*, 15 FCC Rcd 19773 (MB 2000). An application for that modification (File No. BPH-20010117ACJ) was promptly filed after the October 13, 2000 release of the *Report and Order* in that proceeding. Similarly, one year later, in MM Docket No. 01-110, Georgia-Carolina Radiocasting Company, LLC, the very proponent in the proceeding, was granted a community change for Station WGVC from Newberry to Simpsonville, South Carolina. *Newberry and Simpsonville, SC*, 16 FCC Rcd 22587 (MMB 2001). An application for that modification (File No. 20020204AAI) again was promptly filed as required after the December 21, 2001 release of the *Report and Order* in that proceeding.

In both those cases, where it was permissible and practical, *strict* adherence to the filing schedule specified by the Commission was accomplished. McCoy interestingly does not mention those cases, presumably because they did not fit into his jaundiced theories regarding GCR's (or "Sutton's") "record of defiance." Comments at 4. Instead, he seeks to espouse a "record" to the Commission (based upon his cursory interpretation of a *single* case), without even providing a full or even marginally complete summary of GCR's (or "Sutton's") *actual*, full, past record and activities. A review of that record undermines totally McCoy's claims and allegations.

In short, there is nothing in the record or the history of GCR that disqualifies it from obtaining grant of the relief requested in this rulemaking proceeding or being allowed a change of community of license from Elberton to Union Point. As already demonstrated, the proposed change will result in a preferential arrangement of allotments. Moreover, there are no conflicting counterproposal. Therefore, immediate grant of the rulemaking proposal respectfully is requested.

**WHEREFORE**, it is respectfully requested that the "Comments of Frank G. McCoy" be denied, and the rulemaking proposal being considered in this proceeding be granted.

Respectfully submitted,

**GEORGIA-CAROLINA  
RADIOCASTING COMPANY, LLC**

By: \_\_\_\_\_

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*August 2, 2005*

**CERTIFICATE OF SERVICE**

I, Dan J. Alpert, hereby certify that a true and correct copy of the foregoing has been send via First Class Mail to the following:

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