

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

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

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

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

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Grant County Broadcasters, Inc., licensee of Radio Station WNKR, Williamstown, Kentucky ("WNKR"), by its attorneys, hereby opposes the Petition for Reconsideration ("Petition") filed by Augusta/Bracken Broadcasting ("ABB") on July 22, 2005, seeking to reverse the Commission's July 6, 2005 letter decision returning ABB's Petition for Rulemaking ("Rulemaking Petition") seeking to add Channel 294A at Augusta, Kentucky to the Table of Allotments, 47 C.F.R. § 73.202(b).

As noted in the Commission's July 6, 2005 letter decision, WNKR presently operates on Channel 293A at Williamstown, Kentucky and is an applicant for a construction permit to change to Channel 294A at a different site. The Rulemaking

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Petition was returned because the site specified was short-spaced to both the existing WNKR operation and its proposal. The Petition for Reconsideration states that the WNKR application should be considered in the same proceeding as the ABB proposal, i.e., that the two are mutually-exclusive. Thus, it is clear that WNKR is a party in interest with standing to file the instant opposition.

The Rulemaking Petition was prematurely filed. Footnote 2 of the Rulemaking Petition recites that Channel 294B at Hillsboro, Ohio has been deleted in MB Docket No. 02-266. The effective date of that rule change, pursuant to the Report and Order, was May 9, 2005. The earliest date that any filing relying on that rule change could be filed was May 10, 2005, the date the WNKR application was filed. The Rulemaking Petition could have, and should have, been returned as prematurely filed in addition to the short-spacing.

It is well settled that the purpose of reconsideration is to consider new evidence or changed circumstances, and is appropriate only where the petitioner can show material error or omission or can raise additional facts not known or existing until after the last opportunity to present them.<sup>1</sup> The only material error or omission specified in the Petition was that of the petitioner, not the FCC Staff.

According to the Petition, the FCC Staff should have used a set of coordinates other than that which formed the basis for the return. This argument that the Staff picked

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<sup>1</sup> *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, 18 FCC Rcd 10180 (2003); *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku Band Frequency Range*, 18 FCC Rcd 8428 (2003); *Larry L. Schrecongost v. TCI of Pennsylvania, Inc.*, 16 FCC Rcd 20989 (2001).

the wrong set of coordinates ignores the facts. The coordinates which ABB now says are the correct ones appear but once in the Rulemaking Petition, in an allocation study. On the other hand, the set chosen by the Staff appears five times in the Rulemaking Petition: (i) in footnote 1 as the reference coordinates; (ii) in paragraph 1 as the rule change proposed; (iii) in the opening paragraph of the Technical Report; (iv) in the Allocation Analyses; (v) in Exhibit E-3 Line of Sight Study. Faced with two sets of coordinates, one of which is used once and one of which is used five times, it was not unreasonable for the Staff to assume that the set used most was correct.

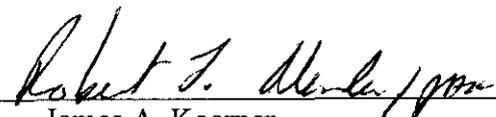
ABB has provided no legitimate reason for reconsideration. Its Petition should be denied.

In the unlikely event that the Staff should feel that reconsideration is appropriate, it should not be granted *nunc pro tunc*. In *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917, 4919 (1992), at footnote 17 the Commission addressed the situation in which an application is filed first and subsequently a petition for rulemaking is filed which does not conflict with the application, but the application is subsequently amended to correct a defect or for some other reason. "If this amendment conflicts with the rulemaking petition, we do not intend to provide the amended application cut-off protection *nunc pro tunc* as of the date the unamended application would receive cut-off protection. Instead, the amended application will be treated as if filed on the date of the amendment for purposes of applying the cut-off rule."

In this case, the Petition for Reconsideration is similar to an amendment to the Rulemaking Petition. At best, the rulemaking proposal could be considered filed as of the date of the Petition for Reconsideration, July 22, 2005. This is subsequent to the June 9, 2005 freeze date announced by the Commission in the Notice of Proposed Rule Making in MB Docket No. 05-210, FCC 05-120, released June 14, 2005. As such it must again be returned.

Respectfully submitted,

**GRANT COUNTY BROADCASTERS, INC.**

By:   
James A. Koerner  
Robert L. Olender  
Their Attorneys

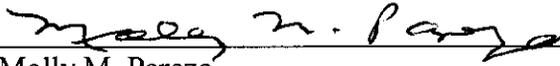
September 8, 2005

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## CERTIFICATE OF SERVICE

I, Molly M. Parezo, secretary at Koerner & Olender, P.C., do hereby certify that on this 8<sup>th</sup> day of September, 2005, I caused a copy of the foregoing “**Opposition to Petition for Reconsideration**” to be served by first-class mail, postage prepaid, to the following:

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Molly M. Parezo