

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

JAN 17 2006

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 05-310
FM Broadcast Stations)	RM - 11292
(Effingham and Valley Falls, Kansas and)	RM - 11300
Humboldt and Pawnee City, Nebraska))	
)	

ORIGINAL

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

REPLY COMMENTS

Cumulus Licensing LLC ("Cumulus"), permittee of Channel 244A, Humboldt, Nebraska, by its counsel, hereby submits its reply comments in the above captioned proceeding in reply to (i) a Counterproposal filed by Viking Enterprises, LLC ("Viking") on January 3, 2006, and (ii) a letter filed by C.R. Communications, Inc. ("C.R.") on December 8, 2005. As discussed herein, Viking's Counterproposal is defective and C.R.'s Letter fails to raise any issues that warrant denial of Cumulus' proposal. Thus, both should be dismissed. In support hereof, Cumulus states as follows:

1. In its Counterproposal, Viking proposes to (i) allot Channel 245C2 to Holton, Kansas, and (ii) substitute Channel 272A for Channel 244A at Humboldt, Nebraska. However, neither the Commission nor the public (including Cumulus) can verify that these changes comply with the Commission's spacing rules because the Engineering Statement attached to Viking's

No. of Copies rec'd 044
List A B C D E

Counterproposal does not include channel studies.¹ Thus, Viking's Counterproposal is defective because it was not technically correct and substantially complete when filed and it must be returned. See *Springdale, Arkansas, et al.*, 4 FCC Rcd 674 (1989); *Letter from John A. Karousos to Dan J. Alpert, counsel to KERM, Inc.*, (May 6, 2005) ("the Alpert Letter"); *Letter from John A. Karousos to James L. Oyster, counsel to Finger Lakes Radio Group*, (February 10, 2005) (the "Oyster Letter").²

2. In each of these cases, the Commission returned proposals to the petitioners because they failed to include a channel spacing study. For example, in *Springdale*, the Commission returned a counterproposal filed by Carthage Broadcasting Company because it did not contain a channel spacing study. The Commission did this because "[c]ounterproposals must be technically correct and substantially complete when filed in order to afford all parties an opportunity to fully respond in reply comments." 4 FCC Rcd at note 7. More recently, in the *Alpert Letter* and the *Oyster Letter*, the Commission returned rule making petitions because they did include channel studies to demonstrate that the proposed sites complied with Section 73.207 of the Commission's Rules. Here, the situation is analogous because Viking's Counterproposal does not include channel studies, and thus it too should be dismissed.

3. The Letter filed by C.R. should also be dismissed. It asks the Commission for more time to reply to Cumulus' proposal,³ but also insinuates that Cumulus' proposal is not in the public interest because it will remove an unbuilt construction permit from Humboldt. C.R.

¹ The copy of the Counterproposal served upon undersigned counsel and the copy obtained from the Commission both contain a reference to the channel studies as Tables 1.0, 1.1, and 1.2 in the Contents section of the Engineering Statement. However, the actual studies are missing.

² The *Alpert Letter* and the *Oyster Letter* are attached hereto as Exhibit 1.

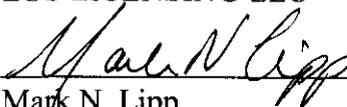
³ The filing date for comments expired on January 3, 2006. C.R. filed its request for additional time on December 8, 2005, believing that it only had until that date to file. No further comments from C.R. have been received. Additionally, Cumulus opposes C.R.'s request for additional time, but reserves the right to respond to any additional comments made by C.R. at a later date.

cites no case law to support this assertion and, as Cumulus indicated in its Counterproposal (which the Commission reiterated in the *Notice of Proposed Rule Making*), removal of an unbuilt facility does not present the same loss of service concerns as removal of an operating station that the public has become reliant upon. *See Linden, Texas, et al.*, 16 FCC Rcd 10853, 10854 (2001); *Grand Isle and Empire, Louisiana*, 15 FCC Rcd 9162, 9163 (2000); *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664, 7665 (1997). C.R. also fails to acknowledge the fact that Cumulus' proposal is in the public interest because it will result in the allotment of first local services at Effingham, Kansas, and Pawnee City, Nebraska, and, as recognized by C.R., the allotment of another channel at Humboldt. These new allotments represent a preferential arrangement of allotments which serves the public interest more than the Humboldt channel alone.

WHEREFORE, for the foregoing reasons, Cumulus respectfully requests that the Commission dismiss Viking's Counterproposal and C.R.'s Letter.

Respectfully submitted,

CUMULUS LICENSING LLC

By: 
Mark N. Lipp
Scott Woodworth
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave, NW
Suite 600
Washington, DC 20004-1008
(202) 639-6500

Its Counsel

January 17, 2006

EXHIBIT 1



Federal Communications Commission
Washington, D.C. 20554

*Imaging Center
CY C203*

May 6, 2005

Dan J. Alpert, Esq.
2120 N. 21st Road
Arlington, Virginia 22201

DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
MAY 11 2005
FCC - MAILROOM

Dear Mr. Alpert:

This is in response to the petition for rule making you filed on March 29, 2005 on behalf of KERM, Inc., licensee of Station KURM-FM, Channel 262A, Southwest City, Missouri. That petition requests the reallocation of Channel 262A from Southwest City to Gravette, Arkansas and the modification of Station KURM-FM's license to reflect the new community. The petition for rulemaking proposes to use the Station KURM-FM license site, with coordinates, but the petition includes no other engineering information.

We are returning your petition for rulemaking. The petition did not provide a technical showing including a channel study for the site you specify to demonstrate that this proposal would comply with the minimum distance separation requirements of Section 73.207 of the Commission's Rules. Further, it makes no showing that Station KURM-FM would place a city grade signal over the entire community of Gravette as required by Section 73.315(a) of the Commission's Rules.

Based on the reasons stated above, we are returning this petition for rule making. You may re-file this petition, provided the proposal meets all the requirements stated above.

Sincerely,

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Enclosure

C4C203
Imagery Center



Federal Communications Commission
Washington, D.C. 20554

February 10, 2005

James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22716-2839

DOCKET FILED

RECEIVED & INSPECTED
FEB 15 2005
FCC - MAIL ROOM

Dear Mr. Oyster:

This is in response to the petition for rule making you filed on December 13, 2004 on behalf of Finger Lakes Radio Group, licensee of Station WFLR-FM, Channel 240A, Dundee, New York. That petition requests a modification and change of community of license for Station WFLR-FM to Channel 238A at Odessa, New York. You indicate that Station WFLR-FM has pending an application for construction permit to change channel and site (File No. BPH-20040317AAL), but you do not specify the channel or site location. The petition for rulemaking proposes to use the site as specified in the referenced application, but the petition gives no information as to the site's location other than including a map, labeled Exhibit 1.

We are returning your petition for rulemaking. The petition did not provide a technical showing including a channel study or coordinates for a specific site to demonstrate that this proposal would comply with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.

Based on the reasons stated above, we are returning this petition for rule making. You may re-file this petition, provided the proposal meets all the requirements stated above.

Sincerely,

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Enclosure

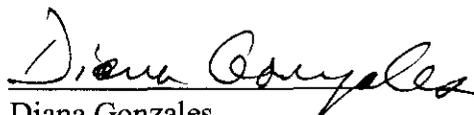
CERTIFICATE OF SERVICE

I, Diana Gonzales, in the law firm of Vinson & Elkins, L.L.P., do hereby certify that I have on this 17th day of January, 2006, caused to be mailed, a copy of the foregoing “**Reply Comments**” to the following:

*Helen McLean
Media Bureau
Federal Communications Commission
445 12th Street, SW. Room 2-B532
Washington, D.C. 20554

Charles A. Radatz, President
C.R. Communications, Inc.
1602 Stone Street
Falls City, NE 68355

Frank R. Jazzo
Jeffrey J. Gee
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209
(*Counsel to Viking Enterprises, LLC*)


Diana Gonzales

*Hand Delivery