

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

RECEIVED

MAR 10 2006

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations)	
(Caseville and Pigeon, Michigan))	MM Docket No. 01-229
)	RM-10257
)	RM-11285
)	RM-11291
)	
(Harbor Beach and Lexington, Michigan))	MM Docket No. 01-231
)	RM-10259
)	RM-11285

To: Office of Secretary
Attention: Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Sanilac Broadcasting Company ("Sanilac"), the licensee of WTGV-FM and WMIC(AM), Sandusky, Michigan, hereby replies to the Opposition to Petition for Reconsideration filed by Liggett Communications, LLC ("Liggett") in the above-referenced proceedings. In its Petition for Reconsideration ("Petition"), Sanilac demonstrated that the Media Bureau erred in amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by adding a second *commercial* FM channel, rather than a first *noncommercial* FM channel, to Lexington, Michigan as requested by Edward Czelada in his timely filed Counterproposal in this proceeding.¹ As shown below, Liggett's Opposition fails to refute the primary substantive factual and legal

¹ Mr. Czelada also timely filed a Petition for Reconsideration ("Czelada Petition") in this proceeding on January 30, 2005. A copy of the Czelada Petition is attached hereto as Exhibit A. By this Reply, Sanilac fully supports the relief requested by Mr. Czelada in his Petition.

No. of Copies rec'd 0+4
List ABCDE

arguments made by Sanilac. This is not surprising in light of the clear weight of evidence supporting the conclusion that the Bureau's decision in this case should be reversed and that Channel 256A at Lexington, Michigan should either be changed to noncommercial status or deleted from the FM Table of Allotments.

Instead of addressing Sanilac's arguments, Liggett's Opposition begins by attacking Sanilac's credibility. In its Petition, Sanilac informed the Commission that principals of Sanilac had spoken with Mr. Czelada on January 27, 2006 and that Mr. Czelada said that he intended to file a Petition for Reconsideration requesting that the Bureau either change the status of Channel 256A in Lexington to noncommercial status or, in the alternative, delete the channel altogether.² In response, Liggett, makes the outlandish claim that Sanilac's Petition should be rejected because it is "entirely based on pure hearsay."³ Yet if Liggett had carefully examined the record before it filed its Opposition, it would have learned that Mr. Czelada had kept his word by timely filing his own Petition for Reconsideration. Thus, Liggett's unwarranted claims regarding "hearsay" and Sanilac's "credibility" are moot and irrelevant to the outcome of this matter.

Liggett's Opposition also undertakes a belated and unpersuasive effort to express an interest in applying for the commercial allotment at Lexington *more than four years* after the original Petition for Rulemaking and Mr. Czelada's Counterproposal were filed in this proceeding.⁴ However, the Commission has repeatedly stated that it will not accept untimely expressions of interest in contested rulemaking proceedings and that failing to participate in a timely manner places parties at risk that an allotment will either not be made or will be

² Petition at 2.

³ Opposition at 5.

⁴ *Id.* at 7.

withdrawn by the proponent of the allotment.⁵ At the Petition for Reconsideration stage, the Commission has also stated the following:

[A]cceptance of late-filed comments supporting an allotment proposal is limited to situations where there is no opposition to the proposal and where there would be no adverse impact on another pending proposal. *See Moscow, Ohio*, 5 FCC Rcd 927 at ¶ 10 (1990) (Petition for Reconsideration deemed to be untimely expression of interest in a contested proceeding).

Here, acceptance of Liggett's untimely expression of interest would adversely impact Mr. Czelada's Counterproposal and request in his Petition that Channel 256A be corrected to indicate noncommercial status or be withdrawn. Consequently, whether or not the Bureau changes the allotment to noncommercial status or deletes it from the FM Table of Allotments, Commission precedent mandates that Liggett's expression of interest be rejected because it is an untimely expression of interest in a contested proceeding.⁶

Finally, despite Liggett's flawed claim to the contrary, the Bureau should reconsider its decision and honor Mr. Czelada's request to reserve FM Channel 256A for noncommercial use as Mr. Czelada has conclusively demonstrated a greater need for a noncommercial service than for an additional commercial service at Lexington.⁷ Specifically, the Engineering Exhibit to Mr. Czelada's Counterproposal and his Petition for Reconsideration demonstrate that no FM channel that is included among those that are "reserved" can be used without causing prohibited

⁵ *See, e.g., Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1998) ("the Commission is aware of no case ... where an untimely expression of interest was considered in the face of a conflicting proposal"), *aff'd* 4 FCC Rcd 3412 (1989) appeals docketed, *sub nom. Amor Family Broadcasting Group et al. v. FCC*, No. 89-1366 et al. (D.C. Cir. June 6, 1989); *Aritron, Alabama*, 4 FCC Rcd 1182 (1989) ("it is not proper for the Commission to accept [an] untimely expression of interest ... in light of the contested nature of this proceeding"); *Gosnell and Osceola, Arkansas*, 6 FCC Rcd 4579 (1991) ("Failure to participate places potential applicants for that allotment at risk that no party will file a timely expression of interest or that a party may, as here, withdraw its expression of interest").

⁶ The cases cited by Liggett in its Opposition are unavailing because applicants in those cases, unlike Liggett, filed timely expressions of interest. Thus, the cases are easily distinguishable from the facts present in the instant case as Liggett's filing was filed more than four years too late.

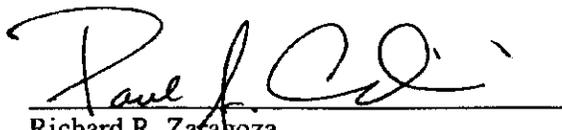
⁷ *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000).

interference, and the proposal would provide a first and second noncommercial radio service to 2,000 or more people who constitute 10 percent of the population within the proposed allocation's 60 dBu (1 mV/m) service contour and surrounding area.⁸ The Media Bureau inexplicably failed to make any mention of why it failed to address Mr. Czelada's valid request. In light of these facts and those noted above, the Bureau should reconsider its decision by either reserving FM Channel 256A at Lexington for noncommercial use or by deleting the channel.

Respectfully submitted,

SANILAC BROADCASTING COMPANY

By:


Richard R. Zaragoza
Paul A. Cicelski

Its Attorneys

PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Dated: March 10, 2006

⁸ See Counterproposal at 2; Petition at 2.

EXHIBIT A

... DIVISION

Federal Communications Commission

DA 05-3214

2006 JAN 31 P 2:46

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

STAMP & RETURN
COPY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Harbor Beach and Lexington, Michigan)

MM Docket No. 01-231
RM-11285

RECEIVED - FCC

JAN 30 2006

PETITION FOR RECONSIDERATION

Federal Communication Commission
Bureau / Office

To Chief, Audio Division, Media Bureau:

The Audio Division has before it the *Report and Order* in the above-captioned proceeding, setting forth a proposal to allot an FM channel to a specific community.¹ In the proceeding, the allotment of Channel 256A was allotted to Lexington, Michigan,² in response to a counterproposal that was filed by the undersigned, Edward Czelada ("Czelada").³ The undersigned requested the channel be designated for non-commercial service in the counterproposal and stated the channel would provided first and second non-

¹ See *Havishorne, Oklahoma, Mareland, Oklahoma, Reyon, Oklahoma, Junction, Texas, Cuseville, Michigan, Derkerville, Michigan, Harbor Beach, Michigan, Port Sanilac, Michigan, Altan, Missouri, and Firth, Nebraska*, 16 FCC Rcd 16,341 (MM 2001).

² In MM Docket No. 01-231, Channel 256A can be allotted to Lexington in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 11.9 kilometers (7.4 miles) north of Lexington at the following reference coordinates: 43-22-30 NL and R2-32-04 WL. The Canadian government has concurred in the proposed allotment of Channel 256A at Lexington, which is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

³ Edward Czelada is the president of Superior Communications, which is the licensee of 5 non-commercial stations in Michigan.

commercial service to the Lexington, MI and surrounding areas.⁴ A channel study was provided demonstrating the lack of available class "A" 6 kW noncommercial channels.⁵ In the *Report and Order* the Commission is silent on the request to designate the channel for non-commercial service, hence the instant *Petition for Reconsideration* is necessary.

Generally noncommercial stations educational stations operate within the reserved portion of the band. However exemptions have been made to this general rule where a full complement of channels in the reserved portion of the band is not available because of foreign allocations (Canadian or Mexican) or potential interference to operations of VHF Television Channel 6 stations.⁶ In this instance, Lexington, MI is located a short distance (only 26 km) from the Canadian border which has an unusually large amount of allocations in nearby communities. In addition, use of 256A is appropriate as it provides first and second non-commercial service to Lexington, MI and the surrounding area.⁷

⁴ See paragraph 2, page 2 of the counterproposal. Also see exhibit 1 (attached)

⁵ See page 18 of counterproposal for NCE channel study.

⁶ See *Comabahl, Arizona* 47 FR 32717, July 29, 1982; and *Lindsay, West Virginia*, 2 FCC Red Vol. 20 6046 (1987)

⁷ See map in Exhibit 1. First and second service is based on the counterproposal snapshot date of Oct. 29 2001 and provides first and/or second service to 10% or more of the area and population within the 1 mV/m contour. At the time of filing of the counterproposal the 10% criteria was not in effect but is provided herein for public interest purposes. See the NCE Second Report and Order, 18 FCC Red 6691 (2003).

WHEREFORE, we respectfully request that channel 256A and Lexington, MI be corrected to non-commercial status, with an asterisk "*256A" indicated in the table of allotments. If such a change cannot be made then the undersigned respectfully requests that the channel be deleted, as non-commercial applicants are now apparently forbidden from applying for non-reserved channels as our earlier understanding of congressional intent is they would be exempt from such auctions.⁸

Respectfully Submitted,

By:

Ed Czelada

Edvard Czelada*

President, Superior Communications

January 27, 2006

Send replies to this matter to:

Superior Communications
3302 N. Van Dyke Rd.
Imley City, MI 48444
(810) 724-2638

With a courtesy copy to:

Koerner & Olender
11913 Grey Hollow Court
North Bethesda, MD 20852
(301) 468-3336

* The above signed hereby verifies that this document and previous related pleadings pursuant to 47 CFR 1.405 of the Commission's rules, is true and correct to the best of my knowledge and belief, except for items which the Commission takes official notice.

⁸ See *NPR vs. FCC*, DC Circuit Court No. 00-1246, decided July 3, 2001.

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing "REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION" was served via U.S. mail on this 10th day of March 2006, to the following:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

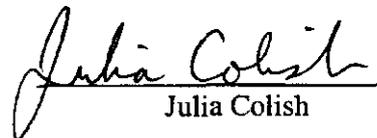
John Joseph McVeigh
12101 Blue Paper Trail
Columbia, MD 21044

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel
1050 17th Street, N.W. – Suite 600
Washington, D.C. 20036
Counsel for Charles Crawford

Edward T. Czelada
3302 N. Van Dyke
Imlay City, Michigan 48444

Katherine Pyeatt
6655 Aintree Circle
Dallas, Texas 75214

John A. Karousos *
Assistant Chief
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054



Julia Colish

* *Sent Via Hand Delivery*