

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

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In the Matter of)	Federal Communications Commission
)	Office of Secretary
Amendment of Section 73.202(b))	MB Docket No. 04-305
Table of Allotments,)	RM-10980
FM Broadcast Stations.)	RM-11328
)	RM-11329
(Oak Harbor and Sedro-Wooley, Washington))	

To: The Secretary
(Attention: Assistant Chief, Audio Division)

REPLY COMMENTS

AND

SUPPLEMENT TO STATEMENT REGARDING COUNTERPROPOSALS

Bible Broadcasting Network, Inc. ("BBN"), by its attorneys, respectfully files these Reply Comments and Supplement to its Statement Regarding Counterproposals ("Statement") filed May 5, 2006, as invited by the *Public Notices*, Report Nos. 2669 and 2770, released April 21, 2006. By *Notice of Proposed Rule Making*, DA 04-2461, released August 6, 2004 ("NPRM"), the Commission proposed, *inter alia*, to allot FM Channel 289A to Oak Harbor, Washington. On September 30, 2004, the deadline for filing comments and counterproposals, BBN supported the allotment of the channel to Oak Harbor, Washington, but requested that it be reserved for noncommercial

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educational ("NCE") use as Channel *289A in the Commission's Table of Allotments.¹

On May 5, 2006, BBN filed its Statement generally summarizing the pleadings in this docket and reaffirming BBN's interest in the use of Channel *289A at Oak Harbor.

However, on the same date, BBN's counsel received a copy of "Reply Comments" filed May 1, 2006, by Jodesha Broadcasting, Inc. ("Jodesha"), counterproponent for the use of Channel 289A at Sedro-Wooley, Washington.

Jodesha's Reply Comments attempt two mutually-exclusive goals: (1) to argue that no showing of community independence pursuant to *Faye and Richard Tuck*² is required, citing *Easton, Merced and North Fork, California*³, but (2) to submit a *Tuck* analysis anyway, "on the chance that the Allocation Branch⁴ may wish to revisit its policy..." [footnote added.] BBN encourages the Commission to do just that.

Simply stated, the *Tuck* analysis should have been submitted at the time Jodesha submitted its counterproposal nearly two years ago so the Commission could make an informed decision under Title 47 USC § 307(b)⁵. In *Easton*, cited by Jodesha, the Commission accepted supplemental comments because there were no objections filed by any of the parties in the proceeding, and the party seeking to supplement its case sought leave to do so. Jodesha has not taken this procedural step. Jodesha is correct that, the

¹ The deadline for submitting this Reply is May 8, 2006, so it is timely filed.

² 3 FCC Rcd 5374 (1988).

³ 15 FCC Rcd 5046.

⁴ The Allocations Branch of the Mass Media Bureau has been abolished. Decisions in rule making proceedings are now made by the Assistant Chief, Audio Division, Media Bureau.

⁵ Section 307(b) of the Communications Act of 1934, as amended (herein the "Act").

Commission's policy has been not to apply the *Tuck* test to "drop-in" allotments, but this policy can, as here, result in legally insupportable decisions. It is the Commission's duty to comply with Section 307(b) of the Act; i.e., to determine which among competing mutually-exclusive proposals best results in a preferential arrangement of allotments. Jodesha apparently anticipates that this policy may change, since it has attempted to submit a late *Tuck* showing. The Commission should not ignore that Jodesha is proposing a fifth service to the Mount Vernon area, while BBN proposes a second service (and a noncommercial service) to Oak Harbor. Thus, if Jodesha were required to submit *Tuck* data, it had to be submitted in the counterproposal. Jodesha's claim that the cases cited by BBN are inapposite, i.e., there were no "technical" deficiencies in Jodesha's proposal, is nonsensical. Nothing could be more "technical" than evidence showing whether one community should prevail over another under the policies set forth in Section 307(b) of the Act and its progeny. In this case, Jodesha should have submitted its *Tuck* showing as a part of its counterproposal so that interested parties could comment on it. Jodesha's late-submission of the data is an admission of its failure. Jodesha cannot reset the Commission's time clock by filing Reply Comments containing *Tuck* data.⁶ It is well-established that counterproposals must be technically correct at the time of their filing so that all parties are afforded an opportunity to respond in reply comments. The Commission should not accept Jodesha's late-filed attempted cure, because all counterproposals are expected to be "technically and procedurally correct when filed and may not be amended at a later date. [emphasis added]." See *Rosendale, New York*⁷, ,

⁶ BBN will not comment on the merits of Jodesha's *Tuck* showing because nothing requires BBN to do so.

⁷ 10 FCC Rcd 11471(1995) *aff'd on other grounds*, 11 FCC Rcd 3607 (1996).

*Hondo, Texas*⁸; *Flora, Mississippi*⁹, (failure to include certificate pursuant to Section 1.52 rendered counterproposal defective); *Fort Bragg, California*¹⁰, *Broken Arrow and Bixby, Oklahoma and Coffeerville, Kansas*¹¹.

BBN's Engineering Statement submitted October 15, 2004, shows that the allotment of Channel 289A to Sedro-Wooley would result in a fifth local service to the Mount Vernon Urbanized Area, while the BBN proposal would result in a second local service to Oak Harbor, and a preferential arrangement of allotments. Jodesha's October 15, 2004, "Reply Comments" did not address this issue, but pointed out only that the proposal to allot Channel 298A to Oak Harbor, was not for a first local service, a fact that BBN does not dispute.

Finally, if it is the Commission's policy to permit Jodesha to correct deficiencies in its counterproposal at this time, then BBN should be permitted to express its interest in Channel *289A as a noncommercial educational allotment at Sedro-Wooley should the Commission allot Channel 289A there. In the case of the allotment of Channel *289 at Sedro-Wooley, BBN would file an application during the applicable window period, and if BBN's application were granted, BBN would promptly construct and operate a noncommercial educational station on Channel *289A at Sedro-Wooley.¹²

In light of the foregoing, BBN respectfully requests the Commission to reserve

⁸ 7 FCC Rcd 7610 (1992).

⁹ 7 FCC Rcd 5477 (1992).

¹⁰ 6 FCC Rcd 5817 (1991).

¹¹ 3 FCC Rcd 6507(1988), *recon denied*, 4 FCC Rcd 6981 (1989).

Channel *289A at Oak Harbor, Washington, for NCE use, and deny Jodesha's
Counterproposal for use of Channel 289A at Sedro-Wooley, Washington.

Respectfully submitted,

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May 8, 2006

¹² This request would, of course, become moot, should the Commission agree with BBN that Jodesha's counterproposal was defective.

CERTIFICATE OF SERVICE

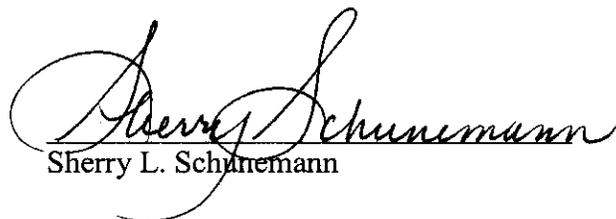
I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Reply Comments and Statement Regarding Counterproposals" was mailed by First Class U.S. Mail, postage prepaid (or hand delivered as marked with an asterisk), this 8th day of May, 2006, to the following:

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